

Division of Purchasing and General Services Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Val L. Peterson

Senate Sponsor: Michael K. McKell

LONG TITLE

General Description:

This bill modifies the Utah Procurement Code.

Highlighted Provisions:

This bill:

- defines a term;
- eliminates the limiting option of the Purchasing from Persons with Disabilities Advisory Board (PPDAB) to form an association to assist the PPDAB with its functions;
- authorizes the PPDAB to contract with a person to assist the PPDAB with its functions;
- codifies that awarding a contract to a vendor is not the creation of a contract with the vendor;
- prohibits the inclusion of certain contractual provisions in a procurement contract, with exceptions;
- codifies that the state and a procurement unit may not be held liable for certain types of damages; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-6a-103, as last amended by Laws of Utah 2024, Chapters 291, 408 and 438

63G-6a-109, as last amended by Laws of Utah 2022, Chapter 421

63G-6a-303, as last amended by Laws of Utah 2023, Chapter 43

28 **63G-6a-506**, as last amended by Laws of Utah 2021, Chapter 344

29 **63G-6a-805**, as last amended by Laws of Utah 2016, Chapter 271

30 **63G-6a-1203**, as last amended by Laws of Utah 2015, Chapter 218

31 ENACTS:

32 **63G-6a-1201.5**, Utah Code Annotated 1953

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

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

36 **63G-6a-103 . Definitions.**

37 As used in this chapter:

- 38 (1) "Approved vendor" means a person who has been approved for inclusion on an
39 approved vendor list through the approved vendor list process.
- 40 (2) "Approved vendor list" means a list of approved vendors established under Section
41 63G-6a-507.
- 42 (3) "Approved vendor list process" means the procurement process described in Section
43 63G-6a-507.
- 44 (4)(a) "Award" means, in relation to a contract, a procurement unit's selection of a
45 vendor to supply a procurement item after the procurement unit engages in:
46 (i) a standard procurement process; or
47 (ii) an exception to a standard procurement process under Part 8, Exceptions to
48 Procurement Requirements.
- 49 (b) "Award" does not mean, in relation to a contract, a procurement unit's offer or
50 acceptance of any terms or conditions related to the procurement unit's acquisition or
51 receipt of the procurement item.
- 52 [(4)] (5) "Bidder" means a person who submits a bid or price quote in response to an
53 invitation for bids.
- 54 [(5)] (6) "Bidding process" means the procurement process described in Part 6, Bidding.
- 55 [(6)] (7) "Board" means the Utah State Procurement Policy Board, created in Section
56 63G-6a-202.
- 57 [(7)] (8) "Change directive" means a written order signed by the procurement officer that
58 directs the contractor to suspend work or make changes, as authorized by contract,
59 without the consent of the contractor.
- 60 [(8)] (9) "Change order" means a written alteration in specifications, delivery point, rate of
61 delivery, period of performance, price, quantity, or other provisions of a contract, upon

mutual agreement of the parties to the contract.

~~[(9)]~~ (10) "Chief procurement officer" means the individual appointed under Section 63A-2-102.

~~[(10)]~~ (11) "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 the process 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.

~~[(11)]~~ (12) "Conservation district" means the same as that term is defined in Section 17D-3-102.

~~[(12)]~~ (13) "Construction project":

(a) means a project for the construction, renovation, alteration, improvement, or repair of a public facility on real property, including all services, labor, supplies, and materials for the project; and

(b) does not include services and supplies for the routine, day-to-day operation, repair, or maintenance of an existing public facility.

~~[(13)]~~ (14) "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.

~~[(14)]~~ (15) "Construction subcontractor":

- (a) means a person under contract with a contractor or another subcontractor to provide services or labor for the design or construction of a construction project;
- (b) includes a general contractor or specialty contractor licensed or exempt from licensing under Title 58, Chapter 55, Utah Construction Trades Licensing Act; and
- (c) does not include a supplier who provides only materials, equipment, or supplies to a contractor or subcontractor for a construction project.

~~[(15)]~~ (16) "Contract" means an agreement for a procurement.

~~[(16)]~~ (17) "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.

~~[(17)]~~ (18) "Contractor" means a person who is awarded a contract with a procurement unit.

~~[(18)]~~ (19) "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.

~~[(19)]~~ (20) "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.

~~[(20)]~~ (21) "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.

130 ~~[(21)]~~ (22) "Cost-reimbursement contract" means a contract under which a contractor is
131 reimbursed for costs which are allowed and allocated in accordance with the contract
132 terms and the provisions of this chapter, and a fee, if any.

133 ~~[(22)]~~ (23) "Days" means calendar days, unless expressly provided otherwise.

134 ~~[(23)]~~ (24) "Definite quantity contract" means a fixed price contract that provides for a
135 specified amount of supplies over a specified period, with deliveries scheduled
136 according to a specified schedule.

137 ~~[(24)]~~ (25) "Design professional" means:

- 138 (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects
139 Licensing Act;
- 140 (b) an individual licensed as a professional engineer or professional land surveyor under
141 Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors
142 Licensing Act;
- 143 (c) an individual licensed under Title 58, Chapter 53, Landscape Architects Licensing
144 Act, to engage in the practice of landscape architecture, as defined in Section
145 58-53-102; or
- 146 (d) an individual certified as a commercial interior designer under Title 58, Chapter 86,
147 State Certification of Commercial Interior Designers Act.

148 ~~[(25)]~~ (26) "Design professional procurement process" means the procurement process
149 described in Part 15, Design Professional Services.

150 ~~[(26)]~~ (27) "Design professional services" means:

- 151 (a) professional services within the scope of the practice of architecture as defined in
152 Section 58-3a-102;
- 153 (b) professional engineering as defined in Section 58-22-102;
- 154 (c) master planning and programming services;
- 155 (d) professional services within the scope of the practice of landscape architecture, as
156 defined in Section 58-53-102; or
- 157 (e) services within the scope of the practice of commercial interior design, as defined in
158 Section 58-86-102.

159 ~~[(27)]~~ (28) "Design-build" means the procurement of design professional services and
160 construction by the use of a single contract.

161 ~~[(28)]~~ (29) "Division" means the Division of Purchasing and General Services, created in
162 Section 63A-2-101.

163 ~~[(29)]~~ (30) "Educational procurement unit" means:

- (a) a school district;
- (b) a public school, including a local school board or a charter school;
- (c) the Utah Schools for the Deaf and the Blind;
- (d) the Utah Education and Telehealth Network;
- (e) an institution of higher education of the state described in Section 53B-1-102; or
- (f) the State Board of Education.

~~[(30)]~~ (31) "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.

~~[(31)]~~ (32)(a) "Executive branch procurement unit" means a department, division, office, bureau, agency, or other organization within the state executive branch.

- (b) "Executive branch procurement unit" does not include the Colorado River Authority of Utah as provided in Section 63M-14-210.

~~[(32)]~~ (33) "Facilities division" means the Division of Facilities Construction and Management, created in Section 63A-5b-301.

~~[(33)]~~ (34) "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.

~~[(34)]~~ (35) "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.

~~[(35)]~~ (36) "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.

198 ~~[(36)]~~ (37) "Human services procurement item" means a procurement item used to provide
199 services or support to a child, youth, adult, or family.

200 ~~[(37)]~~ (38) "Immaterial error":

201 (a) means an irregularity or abnormality that is:

202 (i) a matter of form that does not affect substance; or

203 (ii) an inconsequential variation from a requirement of a solicitation that has no, little,
204 or a trivial effect on the procurement process and that is not prejudicial to other
205 vendors; and

206 (b) includes:

207 (i) a missing signature, missing acknowledgment of an addendum, or missing copy of
208 a professional license, bond, or insurance certificate;

209 (ii) a typographical error;

210 (iii) an error resulting from an inaccuracy or omission in the solicitation; and

211 (iv) any other error that the procurement official reasonably considers to be
212 immaterial.

213 ~~[(38)]~~ (39) "Indefinite quantity contract" means a fixed price contract that:

214 (a) is for an indefinite amount of procurement items to be supplied as ordered by a
215 procurement unit; and

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

217 (ii) provides a maximum purchase limit.

218 ~~[(39)]~~ (40) "Independent procurement unit" means:

219 (a)(i) a legislative procurement unit;

220 (ii) a judicial branch procurement unit;

221 (iii) an educational procurement unit;

222 (iv) a local ~~[government]~~ governmental procurement unit;

223 (v) a conservation district;

224 (vi) a local building authority;

225 (vii) a special district;

226 (viii) a public corporation;

227 (ix) a special service district; or

228 (x) the Utah Communications Authority, established in Section 63H-7a-201;

229 (b) the facilities division, but only to the extent of the procurement authority provided
230 under Title 63A, Chapter 5b, Administration of State Facilities;

231 (c) the attorney general, but only to the extent of the procurement authority provided

under Title 67, Chapter 5, Attorney General;

(d) the Department of Transportation, but only to the extent of the procurement authority provided under Title 72, Transportation Code;

(e) the Department of Health and Human Services, but only for the procurement of a human services procurement item; or

(f) any other executive branch department, division, office, or entity that has statutory procurement authority outside this chapter, but only to the extent of that statutory procurement authority.

~~[(40)]~~ (41)(a) "Interlocal entity" means a separate political subdivision created under Title 11, Chapter 13, Interlocal Cooperation Act.

(b) "Interlocal entity" does not include a project entity.

~~[(41)]~~ (42) "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 ~~[(41)(a)]~~ (42)(a).

~~[(42)]~~ (43) "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.

~~[(43)]~~ (44) "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.

~~[(44)]~~ (45) "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.

~~[(45)]~~ (46) "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) a committee, subcommittee, commission, or other organization:
 - (i) within the state legislative branch; or
 - (ii)(A) that is created by statute to advise or make recommendations to the Legislature;
 - (B) the membership of which includes legislators; and
 - (C) for which the Office of Legislative Research and General Counsel provides staff support.

~~[(46)]~~ (47) "Local building authority" means the same as that term is defined in Section 17D-2-102.

~~[(47)]~~ (48) "Local government procurement unit" means:

- (a) a county, municipality, interlocal entity, or project entity, and each office of the county, municipality, interlocal entity, or project entity, unless:
 - (i) the county or municipality adopts a procurement code by ordinance;
 - (ii) the interlocal entity adopts procurement rules or policies as provided in Subsection 11-13-226(2); or
 - (iii) the project entity adopts a procurement code through the process described in Section 11-13-316;
- (b)(i) a county or municipality that has adopted this entire chapter by ordinance, and each office or agency of that county or municipality; and
- (ii) a project entity that has adopted this entire chapter through the process described in Subsection 11-13-316; or
- (c) a county, municipality, or project entity, and each office of the county, municipality, or project entity that has adopted a portion of this chapter to the extent that:
 - (i) a term in the ordinance is used in the adopted chapter; or
 - (ii) a term in the ordinance is used in the language a project entity adopts in its procurement code through the process described in Section 11-13-316.

~~[(48)]~~ (49) "Multiple award contracts" means the award of a contract for an indefinite quantity of a procurement item to more than one person.

~~[(49)]~~ (50) "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.

300 ~~[(50)]~~ (51) "Municipality" means a city or town.

301 ~~[(51)]~~ (52) "Nonadopting local government procurement unit" means:

- 302 (a) a county or municipality that has not adopted Part 16, Protests, Part 17, Procurement
303 Appeals Board, Part 18, Appeals to Court and Court Proceedings, and Part 19,
304 General Provisions Related to Protest or Appeal; and
305 (b) each office or agency of a county or municipality described in Subsection ~~[(51)(a)]~~
306 (52)(a).

307 ~~[(52)]~~ (53) "Offeror" means a person who submits a proposal in response to a request for
308 proposals.

309 ~~[(53)]~~ (54) "Preferred bidder" means a bidder that is entitled to receive a reciprocal
310 preference under the requirements of this chapter.

311 ~~[(54)]~~ (55) "Procure" means to acquire a procurement item through a procurement.

312 ~~[(55)]~~ (56) "Procurement" means the acquisition of a procurement item through an
313 expenditure of public funds, or an agreement to expend public funds, including an
314 acquisition through a public-private partnership.

315 ~~[(56)]~~ (57) "Procurement item" means an item of personal property, a technology, a service,
316 or a construction project.

317 ~~[(57)]~~ (58) "Procurement official" means:

- 318 (a) for a procurement unit other than an independent procurement unit, the chief
319 procurement officer;
320 (b) for a legislative procurement unit, the individual, individuals, or body designated in a
321 policy adopted by the Legislative Management Committee;
322 (c) for a judicial procurement unit, the Judicial Council or an individual or body
323 designated by the Judicial Council by rule;
324 (d) for a local government procurement unit:
325 (i) the legislative body of the local government procurement unit; or
326 (ii) an individual or body designated by the local government procurement unit;
327 (e) for a special district, the board of trustees of the special district or the board of
328 trustees' designee;
329 (f) for a special service district, the governing body of the special service district or the
330 governing body's designee;
331 (g) for a local building authority, the board of directors of the local building authority or
332 the board of directors' designee;
333 (h) for a conservation district, the board of supervisors of the conservation district or the

- 334 board of supervisors' designee;
- 335 (i) for a public corporation, the board of directors of the public corporation or the board
336 of directors' designee;
- 337 (j) for a school district or any school or entity within a school district, the board of the
338 school district or the board's designee;
- 339 (k) for a charter school, the individual or body with executive authority over the charter
340 school or the designee of the individual or body;
- 341 (l) for an institution of higher education described in Section 53B-2-101, the president of
342 the institution of higher education or the president's designee;
- 343 (m) for the State Board of Education, the State Board of Education or the State Board of
344 Education's designee;
- 345 (n) for the Utah Board of Higher Education, the Commissioner of Higher Education or
346 the designee of the Commissioner of Higher Education;
- 347 (o) for the Utah Communications Authority, established in Section 63H-7a-201, the
348 executive director of the Utah Communications Authority or the executive director's
349 designee; or
- 350 (p)(i) for the facilities division, and only to the extent of procurement activities of the
351 facilities division as an independent procurement unit under the procurement
352 authority provided under Title 63A, Chapter 5b, Administration of State Facilities,
353 the director of the facilities division or the director's designee;
- 354 (ii) for the attorney general, and only to the extent of procurement activities of the
355 attorney general as an independent procurement unit under the procurement
356 authority provided under Title 67, Chapter 5, Attorney General, the attorney
357 general or the attorney general's designee;
- 358 (iii) for the Department of Transportation created in Section 72-1-201, and only to
359 the extent of procurement activities of the Department of Transportation as an
360 independent procurement unit under the procurement authority provided under
361 Title 72, Transportation Code, the executive director of the Department of
362 Transportation or the executive director's designee;
- 363 (iv) for the Department of Health and Human Services, and only to the extent of the
364 procurement activities of the Department of Health and Human Services as an
365 independent procurement unit, the executive director of the Department of Health
366 and Human Services or the executive director's designee; or
- 367 (v) for any other executive branch department, division, office, or entity that has

statutory procurement authority outside this chapter, and only to the extent of the procurement activities of the department, division, office, or entity as an independent procurement unit under the procurement authority provided outside this chapter for the department, division, office, or entity, the chief executive officer of the department, division, office, or entity or the chief executive officer's designee.

~~[(58)]~~ (59) "Procurement unit" means:

- (a) a legislative procurement unit;
- (b) an executive branch procurement unit;
- (c) a judicial procurement unit;
- (d) an educational procurement unit;
- (e) the Utah Communications Authority, established in Section 63H-7a-201;
- (f) a local government procurement unit;
- (g) a special district;
- (h) a special service district;
- (i) a local building authority;
- (j) a conservation district; or
- (k) a public corporation.

~~[(59)]~~ (60) "Professional service" means labor, effort, or work that requires specialized knowledge, expertise, and discretion, including labor, effort, or work in the field of:

- (a) accounting;
- (b) administrative law judge service;
- (c) architecture;
- (d) construction design and management;
- (e) engineering;
- (f) financial services;
- (g) information technology;
- (h) the law;
- (i) medicine;
- (j) psychiatry; or
- (k) underwriting.

~~[(60)]~~ (61) "Project entity" means the same as that term is defined in Section 11-13-103.

~~[(61)]~~ (62) "Protest officer" means:

- (a) for the division or an independent procurement unit:

- (i) the procurement official;
- (ii) the procurement official's designee who is an employee of the procurement unit;
- or
- (iii) a person designated by rule made by the rulemaking authority; or
- (b) for a procurement unit other than an independent procurement unit, the chief procurement officer or the chief procurement officer's designee who is an employee of the division .

~~[(62)]~~ (63) "Public corporation" means the same as that term is defined in Section 63E-1-102.

~~[(63)]~~ (64) "Public entity" means the state or any other ~~[government]~~ governmental entity within the state that expends public funds.

~~[(64)]~~ (65) "Public facility" means a building, structure, infrastructure, improvement, or other facility of a public entity.

~~[(65)]~~ (66) "Public funds" means money, regardless of its source, including from the federal government, that is owned or held by a procurement unit.

~~[(66)]~~ (67) "Public transit district" means a public transit district organized under Title 17B, Chapter 2a, Part 8, Public Transit District Act.

~~[(67)]~~ (68) "Public-private partnership" means an arrangement or agreement, occurring on or after January 1, 2017, between a procurement unit and one or more contractors to provide for a public need through the development or operation of a project in which the contractor or contractors share with the procurement unit the responsibility or risk of developing, owning, maintaining, financing, or operating the project.

~~[(68)]~~ (69) "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.

~~[(69)]~~ (70) "Real property" means land and any building, fixture, improvement, appurtenance, structure, or other development that is permanently affixed to land.

~~[(70)]~~ (71) "Request for information" means a nonbinding process through which a procurement unit requests information relating to a procurement item.

~~[(71)]~~ (72) "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.

~~[(72)]~~ (73) "Request for proposals process" means the procurement process described in Part

7, Request for Proposals.

~~[(73)]~~ (74) "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.

~~[(74)]~~ (75) "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.

~~[(75)]~~ (76) "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.

~~[(76)]~~ (77) "Responsive" means conforming in all material respects to the requirements of a solicitation.

~~[(77)]~~ (78) "Rule" includes a policy or regulation adopted by the rulemaking authority, if adopting a policy or regulation is the method the rulemaking authority uses to adopt provisions that govern the applicable procurement unit.

~~[(78)]~~ (79) "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 facilities division, the facilities division;
 - (B) for the Office of the Attorney General, the attorney general;
 - (C) for the Department of Transportation created in Section 72-1-201, the executive director of the Department of Transportation;
 - (D) for the Department of Health and Human Services, the executive director of the Department of Health and Human Services; and
 - (E) for any other executive branch department, division, office, or entity that has

- 470 statutory procurement authority outside this chapter, the governing authority of
471 the department, division, office, or entity; and
- 472 (ii) for each other executive branch procurement unit, the board;
- 473 (d) for a local government procurement unit:
- 474 (i) the governing body of the local government unit; or
- 475 (ii) an individual or body designated by the local government procurement unit;
- 476 (e) for a school district or a public school, the board, except to the extent of a school
477 district's own nonadministrative rules that do not conflict with the provisions of this
478 chapter;
- 479 (f) for a state institution of higher education, the Utah Board of Higher Education;
- 480 (g) for the State Board of Education or the Utah Schools for the Deaf and the Blind, the
481 State Board of Education;
- 482 (h) for a public transit district, the chief executive of the public transit district;
- 483 (i) for a special district other than a public transit district or for a special service district,
484 the board, except to the extent that the board of trustees of the special district or the
485 governing body of the special service district makes its own rules:
- 486 (i) with respect to a subject addressed by board rules; or
- 487 (ii) that are in addition to board rules;
- 488 (j) for the Utah Educational Savings Plan, created in Section 53B-8a-103, the Utah
489 Board of Higher Education;
- 490 (k) for the School and Institutional Trust Lands Administration, created in Section
491 53C-1-201, the School and Institutional Trust Lands Board of Trustees;
- 492 (l) for the School and Institutional Trust Fund Office, created in Section 53D-1-201, the
493 School and Institutional Trust Fund Board of Trustees;
- 494 (m) for the Utah Communications Authority, established in Section 63H-7a-201, the
495 Utah Communications Authority board, created in Section 63H-7a-203; or
- 496 (n) for any other procurement unit, the board.
- 497 ~~[(79)]~~ (80) "Service":
- 498 (a) means labor, effort, or work to produce a result that is beneficial to a procurement
499 unit;
- 500 (b) includes a professional service; and
- 501 (c) does not include labor, effort, or work provided under an employment agreement or a
502 collective bargaining agreement.
- 503 ~~[(80)]~~ (81) "Small purchase process" means the procurement process described in Section

504 63G-6a-506.

505 [(81)] (82) "Sole source contract" means a contract resulting from a sole source procurement.

506 [(82)] (83) "Sole source procurement" means a procurement without competition pursuant to
507 a determination under Subsection 63G-6a-802(1)(a) that there is only one source for the
508 procurement item.

509 [(83)] (84) "Solicitation" means an invitation for bids, request for proposals, or request for
510 statement of qualifications.

511 [(84)] (85) "Solicitation response" means:

512 (a) a bid submitted in response to an invitation for bids;

513 (b) a proposal submitted in response to a request for proposals; or

514 (c) a statement of qualifications submitted in response to a request for statement of
515 qualifications.

516 [(85)] (86) "Special district" means the same as that term is defined in Section 17B-1-102.

517 [(86)] (87) "Special service district" means the same as that term is defined in Section
518 17D-1-102.

519 [(87)] (88) "Specification" means any description of the physical or functional
520 characteristics or of the nature of a procurement item included in an invitation for bids
521 or a request for proposals, or otherwise specified or agreed to by a procurement unit,
522 including a description of:

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

524 (b) preparing a procurement item for delivery.

525 [(88)] (89) "Standard procurement process" means:

526 (a) the bidding process;

527 (b) the request for proposals process;

528 (c) the approved vendor list process;

529 (d) the small purchase process; or

530 (e) the design professional procurement process.

531 [(89)] (90) "State cooperative contract" means a contract awarded by the division for and in
532 behalf of all public entities.

533 [(90)] (91) "Statement of qualifications" means a written statement submitted to a
534 procurement unit in response to a request for statement of qualifications.

535 [(91)] (92) "Subcontractor":

536 (a) means a person under contract to perform part of a contractual obligation under the
537 control of the contractor, whether the person's contract is with the contractor directly

or with another person who is under contract to perform part of a contractual obligation under the control of the contractor; and

(b) includes a supplier, distributor, or other vendor that furnishes supplies or services to a contractor.

~~[(92)]~~ (93) "Technology" means the same as "information technology," as defined in Section 63A-16-102.

~~[(93)]~~ (94) "Tie bid" means that the lowest responsive bids of responsible bidders are identical in price.

~~[(94)]~~ (95) "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)]~~ (96) "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)]~~ (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;
- (iv) a design professional; and
- (v) a person who submits an unsolicited proposal under Section 63G-6a-712.

Section 2. Section **63G-6a-109** is amended to read:

63G-6a-109 . Issuing procurement unit and conducting procurement unit.

- (1) With respect to a procurement by an executive branch procurement unit, except for a procurement by an executive branch procurement unit that, under Subsection [63G-6a-103(38)(b), (c), (d), or (e)] 63G-6a-103(40)(b), (c), (d), or (e), is designated as an independent procurement unit:
 - (a) the division is the issuing procurement unit; and
 - (b) the executive branch procurement unit is the conducting procurement unit and is responsible to ensure that the procurement is conducted in compliance with this chapter.
- (2) With respect to a procurement by any other procurement unit, the procurement unit is both the issuing procurement unit and the conducting procurement unit.
- (3) A conducting procurement unit is responsible for contract administration.

Section 3. Section **63G-6a-303** is amended to read:

63G-6a-303 . Role, duties, and authority of chief procurement officer.

- (1) The chief procurement officer:
 - (a) is the director of the division;
 - (b) serves as the central procurement officer of the state;
 - (c) serves as a voting member of the board; and
 - (d) serves as the protest officer for a protest relating to a procurement of an executive branch procurement, except an executive branch procurement unit designated under Subsection [63G-6a-103(38)(b), (c), (d), or (e)] 63G-6a-103(40)(b), (c), (d), or (e) as an independent procurement unit, or a state cooperative contract procurement, unless the chief procurement officer designates another to serve as protest officer, as authorized in this chapter.
- (2) Except as otherwise provided in this chapter, the chief procurement officer shall:
 - (a) develop procurement policies and procedures supporting ethical procurement practices, fair and open competition among vendors, and transparency within the

- 606 state's procurement process;
- 607 (b) administer the state's cooperative purchasing program, including state cooperative
- 608 contracts and associated administrative fees;
- 609 (c) enter into an agreement with a public entity for services provided by the division, if
- 610 the agreement is in the best interest of the state;
- 611 (d) ensure the division's compliance with any applicable law, rule, or policy, including a
- 612 law, rule, or policy applicable to the division's role as an issuing procurement unit or
- 613 conducting procurement unit, or as the state's central procurement organization;
- 614 (e) manage the division's electronic procurement system;
- 615 (f) oversee the recruitment, training, career development, certification requirements, and
- 616 performance evaluation of the division's procurement personnel;
- 617 (g) make procurement training available to procurement units and persons who do
- 618 business with procurement units;
- 619 (h) provide exemplary customer service and continually improve the division's
- 620 procurement operations;
- 621 (i) exercise all other authority, fulfill all other duties and responsibilities, and perform all
- 622 other functions authorized under this chapter; and
- 623 (j) ensure that any training described in this Subsection (2) complies with Chapter 22,
- 624 State Training and Certification Requirements.
- 625 (3) With respect to a procurement or contract over which the chief procurement officer has
- 626 authority under this chapter, the chief procurement officer, except as otherwise provided
- 627 in this chapter:
- 628 (a) shall:
- 629 (i) manage and supervise a procurement to ensure to the extent practicable that
- 630 taxpayers receive the best value;
- 631 (ii) prepare and issue standard specifications for procurement items;
- 632 (iii) review contracts, coordinate contract compliance, conduct contract audits, and
- 633 approve change orders;
- 634 (iv) in accordance with Section 63G-6a-109.5, coordinate with the Division of
- 635 Technology Services, created in Section 63A-16-103, with respect to the
- 636 procurement of information technology services by an executive branch
- 637 procurement unit;
- 638 (v) correct, amend, or cancel a procurement at any stage of the procurement process
- 639 if the procurement is out of compliance with this chapter or a board rule;

- 640 (vi) after consultation with the attorney general's office, correct, amend, or cancel a
641 contract at any time during the term of the contract if:
- 642 (A) the contract is out of compliance with this chapter or a board rule; and
643 (B) the chief procurement officer determines that correcting, amending, or
644 canceling the contract is in the best interest of the state; and
- 645 (vii) make a reasonable attempt to resolve a contract dispute, in coordination with the
646 attorney general's office; and
- 647 (b) may:
- 648 (i) delegate limited purchasing authority to a state agency, with appropriate oversight
649 and control to ensure compliance with this chapter;
- 650 (ii) delegate duties and authority to an employee of the division, as the chief
651 procurement officer considers appropriate;
- 652 (iii) negotiate and settle contract overcharges, undercharges, and claims, in
653 accordance with the law and after consultation with the attorney general's office;
- 654 (iv) authorize a procurement unit to make a procurement pursuant to a regional
655 solicitation, as defined in Subsection 63G-6a-2105(7), even if the procurement
656 item is also offered under a state cooperative contract, if the chief procurement
657 officer determines that the procurement pursuant to a regional solicitation is in the
658 best interest of the acquiring procurement unit; and
- 659 (v) remove an individual from the procurement process or contract administration for:
- 660 (A) having a conflict of interest or the appearance of a conflict of interest with a
661 person responding to a solicitation or with a contractor;
- 662 (B) having a bias or the appearance of bias for or against a person responding to a
663 solicitation or for or against a contractor;
- 664 (C) making an inconsistent or unexplainable score for a solicitation response;
- 665 (D) having inappropriate contact or communication with a person responding to a
666 solicitation;
- 667 (E) socializing inappropriately with a person responding to a solicitation or with a
668 contractor;
- 669 (F) engaging in any other action or having any other association that causes the
670 chief procurement officer to conclude that the individual cannot fairly evaluate
671 a solicitation response or administer a contract; or
- 672 (G) any other violation of a law, rule, or policy.
- 673 (4) The chief procurement officer may not delegate to an individual outside the division the

chief procurement officer's authority over a procurement described in Subsection (3)(a)(iv).

(5) The chief procurement officer has final authority to determine whether an executive branch procurement unit's anticipated expenditure of public funds, anticipated agreement to expend public funds, or provision of a benefit constitutes a procurement that is subject to this chapter.

(6) Except as otherwise provided in this chapter, the chief procurement officer shall review, monitor, and audit the procurement activities and delegated procurement authority of an executive branch procurement unit, except to the extent that an executive branch procurement unit is designated under Subsection [~~63G-6a-103(38)(b), (c), (d), or (e)~~] 63G-6a-103(40)(b), (c), (d), or (e) as an independent procurement unit, to ensure compliance with this chapter, rules made by the applicable rulemaking authority, and division policies.

Section 4. Section **63G-6a-506** is amended to read:

63G-6a-506 . Small purchases.

(1) As used in this section:

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

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

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

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

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

(i) establishing expenditure thresholds, including:

(A) an annual cumulative threshold;

(B) an individual procurement item threshold; and

(C) a single procurement aggregate threshold;

(ii) establishing procurement requirements relating to the thresholds described in Subsection (2)(b)(i); and

(iii) providing for the use of electronic, telephone, or written quotes.

(c) If a procurement unit obtains administrative law judge service through a small purchase standard procurement process, rules made under Subsection (2)(a) shall provide that the process for the procurement of administrative law judge service include an evaluation committee described in Subsection 63G-6a-116(3).

(3) Expenditures made under this section by a procurement unit may not exceed a threshold established by the rulemaking authority, unless the procurement official gives written authorization to exceed the threshold that includes the reasons for exceeding the threshold.

(4) Except as provided in Subsection (5), an executive branch procurement unit may not obtain a procurement item through a small purchase standard procurement process if the procurement item may be obtained through a state cooperative contract or a contract awarded by the chief procurement officer under Subsection 63G-6a-2105(1).

(5) Subsection (4) does not apply if:

(a) the procurement item is obtained for an unanticipated, urgent, or emergency condition, including:

(i) an item needed to avoid stopping a public construction project;

(ii) an immediate repair to a facility or equipment; or

(iii) another emergency condition; or

(b) the chief procurement officer or the procurement official of a procurement unit that is an executive branch procurement unit with independent procurement authority:

(i) determines in writing that it is in the best interest of the procurement unit to obtain an individual procurement item outside of the state contract, comparing:

(A) the contract terms and conditions applicable to the procurement item under the state contract with the contract terms and conditions applicable to the procurement item if the procurement item is obtained outside of the state contract;

(B) the maintenance and service applicable to the procurement item under the state contract with the maintenance and service applicable to the procurement item if the procurement item is obtained outside of the state contract;

(C) the warranties applicable to the procurement item under the state contract with the warranties applicable to the procurement item if the procurement item is

- 742 obtained outside of the state contract;
- 743 (D) the quality of the procurement item under the state contract with the quality of
- 744 the procurement item if the procurement item is obtained outside of the state
- 745 contract; and
- 746 (E) the ability of the vendor under the state contract to match the quoted cost of
- 747 the procurement item if the procurement item is obtained outside of the state
- 748 contract;
- 749 (ii) for a procurement item that, if defective in its manufacture, installation, or
- 750 performance, may result in serious physical injury, death, or substantial property
- 751 damage, determines in writing that the terms and conditions, relating to liability
- 752 for injury, death, or property damage, available from the source other than the
- 753 contractor who holds the state contract, are similar to, or better than, the terms and
- 754 conditions available under the state contract; and
- 755 (iii) grants an exception, in writing, to the requirement described in Subsection (4).
- 756 (6) Except as otherwise expressly provided in this section, a procurement unit:
- 757 (a) may not use the small purchase standard procurement process described in this
- 758 section for ongoing, continuous, and regularly scheduled procurements that exceed
- 759 the annual cumulative threshold; and
- 760 (b) shall make its ongoing, continuous, and regularly scheduled procurements that
- 761 exceed the annual cumulative threshold through a contract awarded through another
- 762 standard procurement process described in this chapter or an applicable exception to
- 763 another standard procurement process, described in Part 8, Exceptions to
- 764 Procurement Requirements.
- 765 (7) This section does not prohibit regularly scheduled payments for a procurement item
- 766 obtained under another provision of this chapter.
- 767 (8)(a) It is unlawful for a person knowingly to divide a single procurement into multiple
- 768 smaller procurements, including by dividing an invoice or purchase order into
- 769 multiple invoices or purchase orders, if:
- 770 (i) the single procurement would not have qualified as a small purchase under this
- 771 section;
- 772 (ii) one or more of the multiple smaller procurements qualify as a small purchase
- 773 under this section; and
- 774 (iii) the division is done with the intent to:
- 775 (A) avoid having to use a standard procurement process, other than the small

776 purchase process, that the person would otherwise be required to use for the
777 single procurement; or
778 (B) make one or more of the multiple smaller procurements fall below a small
779 purchase expenditure threshold established by rule under Subsection (2)(b) that
780 the single procurement would not have fallen below without the division.

781 (b) A violation of Subsection (8)(a) is subject to penalties as provided in Subsection
782 63G-6a-2404.3(2).

783 (9) The Division of Finance within the Department of Government Operations may conduct
784 an audit of an executive branch procurement unit to verify compliance with the
785 requirements of this section.

786 (10) An executive branch procurement unit may not make a small purchase after January 1,
787 2014, unless the chief procurement officer certifies that the person responsible for
788 procurements in the procurement unit has satisfactorily completed training on this
789 section and the rules made under this section.

790 Section 5. Section **63G-6a-805** is amended to read:

791 **63G-6a-805 . Purchase from community rehabilitation programs.**

792 (1) As used in this section:

793 (a) "Advisory board" means the Purchasing from Persons with Disabilities Advisory
794 Board created under this section.

795 ~~[(b) "Central not-for-profit association" means a group of experts designated by the~~
796 ~~advisory board to do the following, under guidelines established by the advisory~~
797 ~~board:]~~

798 ~~[(i) assist the advisory board with its functions; and]~~

799 ~~[(ii) facilitate the implementation of advisory board policies.]~~

800 ~~[(e)]~~ (b)(i) "Community rehabilitation program" means a program that is operated
801 primarily for the purpose of the employment and training of persons with a
802 disability by a government agency or qualified nonprofit organization which is an
803 income tax exempt organization under 26 U.S.C. Sec. 501(c)(3) of the Internal
804 Revenue Code.

805 (ii) A community rehabilitation program:

806 (A) maintains an employment ratio of at least 75% of the program employees
807 under the procurement contract in question have severe disabilities;

808 (B)(I) complies with any applicable occupational health and safety standards
809 prescribed by the United States Department of Labor; or

- (II) is a supported employment program approved by the Utah State Office of Rehabilitation created in Section 35A-1-202;
- (C) has its principal place of business in Utah;
- (D) produces ~~[any]~~ a good provided under this section in Utah; and
- (E) provides ~~[any]~~ a service that is provided by individuals with a majority of whom domiciled in Utah.

~~[(d)]~~ (c) "Person with a disability" means a person with ~~[any]~~ a disability as defined by and covered under the Americans with Disabilities Act of 1990, 42 U.S.C. 12102.

(2) There is created within the division the Purchasing from Persons with Disabilities Advisory Board.

(3) The advisory board shall consist of three members, as follows:

- (a) the director of the division or the director's designee;
- (b) the director of the Utah State Office of Rehabilitation or the director's designee; and
- (c) a representative of the private business community who shall be appointed to a three-year term by the governor with the advice and consent of the Senate.

~~(4)(a)~~ The advisory board shall meet, as needed, to facilitate ~~[the procurement of goods and services from community rehabilitation programs by a procurement unit under this chapter by:]~~ a procurement unit's procurement of a good or service under this chapter from a community rehabilitation program.

~~(b)~~ The advisory board shall:

~~[(a)]~~ (i) ~~[identifying goods and services that are available from community rehabilitation programs]~~ identify the good or service that is available from a community rehabilitation program in accordance with the requirements of Subsection (7);

~~[(b)]~~ (ii) ~~[approving prices]~~ approve a price in accordance with Subsection (7)(c) for ~~[goods and services that are identified under Subsection (4)(a)]~~ the good or service that the advisory board identifies under Subsection (4)(b)(i);

~~[(c)]~~ (iii) ~~[developing, maintaining, and approving a preferred procurement contract list of goods and services identified and priced under Subsections (4)(a) and (b)]~~ develop, maintain, and approve a preferred procurement contract list of the goods and services that the advisory board identifies and prices under Subsections (4)(b)(i) and (ii);

~~[(d)]~~ (iv) ~~[reviewing bids received by a community rehabilitation program]~~ review a community rehabilitation program's bid; and

~~[(e)]~~ (v) ~~[awarding and renewing]~~ award and renew specified contracts for set contract times, without competitive bidding, for ~~[the]~~ a procurement unit's purchase of ~~[goods and services]~~ a good or service under Subsection (7).

(5) The provisions of Subsections (4) and (7)(a) are an exception to the procurement provisions under this chapter.

(6)(a) The advisory board may ~~[designate a central not-for-profit association, appoint its members, and establish guidelines for its duties]~~ enter into an agreement with a person to provide administrative support to the advisory board.

~~[(b) The designated central not-for-profit association serves at the pleasure of the advisory board. The central not-for-profit association or its individual members may be removed by the advisory board at any time by a majority vote of the advisory board.]~~

~~[(e)]~~ (b) Subject to the advisory board guidelines and discretion, ~~[a designated central not-for-profit association may be assigned to perform the following duties]~~ a person described in Subsection (6)(a) shall:

(i) identify ~~[qualified]~~ a community rehabilitation ~~[programs]~~ program and the ~~[goods and services that they provide or have]~~ good or service that the community rehabilitation program provides or has the potential to provide;

(ii) ~~[help ensure that goods and services are]~~ help ensure that a community rehabilitation program's good or service is provided at reasonable quality and delivery levels;

(iii) recommend pricing for ~~[goods and services]~~ a community rehabilitation program's good or service;

(iv) under the advisory board's discretion:

(A) review [bids and recommend the award of contracts under the advisory board's direction] a community rehabilitation program's bid; and

(B) recommend to the advisory board that a procurement unit award a contract to a community rehabilitation program;

(v) collect and report program data to the advisory board and ~~[to]~~ the division; and

(vi) ~~[other duties specified by the advisory board]~~ perform other duties that the advisory board specifies.

(7) Except as provided under Subsection (9), notwithstanding any provision of this chapter to the contrary, ~~[each]~~ a procurement unit shall purchase ~~[goods and services produced by a community rehabilitation program]~~ a community rehabilitation program's good or

878 service using the preferred procurement contract list approved under Subsection [(4)(e)]
879 (4)(b)(iii) if:

880 (a) [~~the good or service offered for sale by a community rehabilitation program~~] the
881 community rehabilitation program's good or service reasonably conforms to the
882 needs and specifications of the procurement unit;

883 (b) the community rehabilitation program can supply the good or service within a
884 reasonable time; and

885 (c) the price of the good or service is reasonably competitive with the cost of procuring
886 the good or service from another source.

887 (8) [~~Each~~] A community rehabilitation program:

888 (a) may submit a bid to the advisory board at any time and not necessarily in response to
889 an invitation for bids; and

890 (b) shall certify on [~~any bid it~~] the bid that the community rehabilitation program submits
891 to the advisory board or to a procurement unit under this section that [~~it~~] the
892 community rehabilitation program is claiming a preference under this section.

893 (9) During a fiscal year, the requirement for a procurement unit to purchase [~~goods and~~
894 ~~services produced by a community rehabilitation program~~] a good or service that a
895 community rehabilitation program produces under the preferred procurement list under
896 Subsection (7) does not apply if the division determines that the total amount of
897 procurement contracts with community rehabilitation programs has reached \$5 million
898 for that fiscal year.

899 (10) In the case of conflict between a purchase under this section and a purchase under
900 Section 63G-6a-804, this section prevails.

901 Section 6. Section **63G-6a-1201.5** is enacted to read:

902 **63G-6a-1201.5 . Award of contract -- Effect.**

903 An award of a procurement contract under this chapter:

904 (1) is not an offer or an acceptance of a bid, proposal, estimate, quote, or an offer; and

905 (2) does not create a contract.

906 Section 7. Section **63G-6a-1203** is amended to read:

907 **63G-6a-1203 . Void and unenforceable provisions of a contract -- Exemptions --**
908 **Limitation of liability and damages.**

909 [~~(1) A contract, including an amendment to an existing contract, entered into under this~~
910 ~~chapter may not require that a design professional indemnify another from liability~~
911 ~~claims that arise out of the design professional's services, unless the liability claim arises~~

from the design professional's negligent act, wrongful act, error or omission, or other liability imposed by law.]

[~~(2) Subsection (1) may not be waived by contract.~~]

[~~(3) Notwithstanding Subsections (1) and (2), a design professional may be required to indemnify a person for whom the design professional has direct or indirect control or responsibility.~~]

(1) As used in this section, "governmental entity" means the same as that term is defined in Section 63G-7-102.

(2) This section does not apply to:

(a) a procurement contract that becomes operative or enforceable before the effective date of this section; or

(b) the extension or renewal of a contract described in Subsection (2)(a).

(3)(a) Except as provided under Subsections (5) and (6), a provision of a procurement contract described in Subsection (4), including a provision incorporated into the contract by reference, is void and unenforceable.

(b) Notwithstanding any provision of a procurement contract that is void and unenforceable under Subsection (3)(a), the remaining provisions of the contract are severable, valid, and enforceable to the fullest extent provided under Utah law.

(4) A provision is void and unenforceable under Subsection (3)(a) if the provision:

(a) restricts the state's or a procurement unit's protection under Chapter 7, Governmental Immunity Act of Utah, from suit, liability, judgment, or obligation, including an obligation to respond to or defend against any claim;

(b) requires a governmental entity to indemnify, defend, or hold harmless another person;

(c) restricts a governmental entity's ability to seek relief in state court;

(d) subjects a governmental entity to binding arbitration or other form of dispute resolution outside the courts;

(e) disallows the procurement unit from having legal counsel and representation from:

(i) legal counsel that the procurement unit chooses;

(ii) the attorney general; or

(iii) legal counsel chosen by a person that has a contractual obligation to indemnify, defend, or hold harmless the state or a procurement unit, subject to the written consent of the state or the procurement unit;

(f) subject to Subsection (5):

(i) subjects a procurement contract or a party to the contract to the laws of any

- 946 jurisdiction other than Utah; or
- 947 (ii) requires the parties to resolve a dispute in a jurisdiction or venue other than Utah;
- 948 (g) restricts a governmental entity from making disclosures of information, as required
- 949 by law or for any legitimate governmental purpose;
- 950 (h) allows a vendor to unilaterally modify any part of the procurement contract,
- 951 including any provision to which the contract contemplates giving legal effect upon
- 952 the vendor providing notice to the procurement unit of the modification or of the
- 953 created legal effect; and
- 954 (i) subject to Subsection (6):
- 955 (i) requires a governmental entity to maintain insurance coverage beyond the types
- 956 and limits required by the state risk manager appointed under Section 63A-4-101.5,
- 957 or to name an additional insured under that coverage;
- 958 (ii) allows a vendor to automatically renew a procurement contract or that creates a
- 959 contractual term in violation of the terms permitted under Section 63G-6a-1204; or
- 960 (iii) limits the liability of a vendor or any third-party for bodily injury, death, or
- 961 damage to tangible property caused by the negligence or willful misconduct of a
- 962 vendor, a third-party, or the vendor's or third-party's employees or agents.
- 963 (5) The assistant attorney general or authorized legal counsel for the procurement unit that
- 964 will sign a procurement contract may, via a signed, express, written authorization made
- 965 prior to the formation of the contract, exempt the contract from a provision described in
- 966 Subsection (4)(f), if the assistant attorney general or authorized legal counsel determines
- 967 that an exemption is necessary to promote the best interests of the state or the
- 968 procurement unit due to:
- 969 (a) the relative disproportionate bargaining positions of the contracting parties;
- 970 (b) market conditions; or
- 971 (c) other unique circumstances identified and described in the authorization.
- 972 (6) The procurement official for a procurement unit seeking to enter into a procurement
- 973 contract may, via a signed, express, written authorization made prior to the formation of
- 974 the contract, exempt the contract from a provision described in Subsection (4)(i), if the
- 975 contract indicates the procurement unit's intent to include the provision, with explicit
- 976 reference to this section.
- 977 (7) Notwithstanding any provision of a procurement contract to the contrary, under no
- 978 circumstance may the state or a procurement unit be held liable for any special,
- 979 incidental, indirect, or consequential damages arising from or relating to a procurement

980 contract.

981 Section 8. **Effective date.**

982 This bill takes effect on May 7, 2025.