

HB0012S01 compared with HB0012

~~{Omitted text}~~ shows text that was in HB0012 but was omitted in HB0012S01

inserted text shows text that was not in HB0012 but was inserted into HB0012S01

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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;
- ▶ ~~{eliminates the option of the Purchasing from Persons with Disabilities Advisory Board (PPDAB) to form a central not-for-profit association to assist the PPDAB with its functions, and }~~ 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 ~~{including }~~ the inclusion of certain contractual ~~{terms }~~ provisions in a procurement contract, ~~{unless the assistant attorney general grants a specific exemption; and }~~ with exceptions;
- ▶ codifies that the state and a procurement unit may not be held liable for certain types of damages; and

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20 ▶ makes technical and conforming {corrections} changes.

19 Money Appropriated in this Bill:

20 None

21 None

24 AMENDS:

25 **63G-6a-103** , as last amended by Laws of Utah 2024, Chapters 291, 408 and 438 , as last amended
by Laws of Utah 2024, Chapters 291, 408 and 438

26 **63G-6a-109** , as last amended by Laws of Utah 2022, Chapter 421 , as last amended by Laws of
Utah 2022, Chapter 421

27 **63G-6a-303** , as last amended by Laws of Utah 2023, Chapter 43 , as last amended by Laws of Utah
2023, Chapter 43

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

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

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

31 ENACTS:

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

33

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.**

As used in this chapter:

40 (1) "Approved vendor" means a person who has been approved for inclusion on an approved vendor list
through the approved vendor list process.

42 (2) "Approved vendor list" means a list of approved vendors established under Section 63G-6a-507.

44 (3) "Approved vendor list process" means the procurement process described in Section 63G-6a-507.

46 (4)

. (a) "Award" means, in relation to a contract, a procurement unit's selection of a vendor to supply a
procurement item after the procurement unit engages in:

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- 48 (i) a standard procurement process; or
- 49 (ii) an exception to a standard procurement process under Part 8, Exceptions to Procurement Requirements.
- 51 (b) "Award" does not mean, in relation to a contract, a procurement unit's offer or acceptance of any terms or conditions related to the procurement unit's acquisition or receipt of the procurement item.
- 54 [(4)] (5) "Bidder" means a person who submits a bid or price quote in response to an invitation for bids.
- 56 [(5)] (6) "Bidding process" means the procurement process described in Part 6, Bidding.
- 57 [(6)] (7) "Board" means the Utah State Procurement Policy Board, created in Section 63G-6a-202.
- 59 [(7)] (8) "Change directive" means a written order signed by the procurement officer that directs the contractor to suspend work or make changes, as authorized by contract, without the consent of the contractor.
- 62 [(8)] (9) "Change order" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract, upon mutual agreement of the parties to the contract.
- 65 [(9)] (10) "Chief procurement officer" means the individual appointed under Section 63A-2-102.
- 67 [(10)] (11) "Conducting procurement unit" means a procurement unit that conducts all aspects of a procurement:
- 69 (a) except:
- 70 (i) reviewing a solicitation to verify that it is in proper form; and
- 71 (ii) causing the publication of a notice of a solicitation; and
- 72 (b) including:
- 73 (i) preparing any solicitation document;
- 74 (ii) appointing an evaluation committee;
- 75 (iii) conducting the evaluation process, except the process relating to scores calculated for costs of proposals;
- 77 (iv) selecting and recommending the person to be awarded a contract;
- 78 (v) negotiating the terms and conditions of a contract, subject to the issuing procurement unit's approval; and
- 80 (vi) contract administration.
- 81 [(11)] (12) "Conservation district" means the same as that term is defined in Section 17D-3-102.
- 83 [(12)] (13) "Construction project":

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- 84 (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
- 87 (b) does not include services and supplies for the routine, day-to-day operation, repair, or maintenance
of an existing public facility.
- 89 ~~[(13)]~~ (14) "Construction manager/general contractor":
- 90 (a) means a contractor who enters into a contract:
- 91 (i) for the management of a construction project; and
- 92 (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
- 95 (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.
- 99 ~~[(14)]~~ (15) "Construction subcontractor":
- 100 (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;
- 102 (b) includes a general contractor or specialty contractor licensed or exempt from licensing under Title
58, Chapter 55, Utah Construction Trades Licensing Act; and
- 104 (c) does not include a supplier who provides only materials, equipment, or supplies to a contractor or
subcontractor for a construction project.
- 106 ~~[(15)]~~ (16) "Contract" means an agreement for a procurement.
- 107 ~~[(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:
- 110 (a) implementing the contract;
- 111 (b) ensuring compliance with the contract terms and conditions by the conducting procurement unit and
the contractor;
- 113 (c) executing change orders;
- 114 (d) processing contract amendments;
- 115 (e) resolving, to the extent practicable, contract disputes;
- 116 (f) curing contract errors and deficiencies;

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- 117 (g) terminating a contract;
- 118 (h) measuring or evaluating completed work and contractor performance;
- 119 (i) computing payments under the contract; and
- 120 (j) closing out a contract.
- 121 ~~[(17)]~~ (18) "Contractor" means a person who is awarded a contract with a procurement unit.
- 122 ~~[(18)]~~ (19) "Cooperative procurement" means procurement conducted by, or on behalf of:
- 123 (a) more than one procurement unit; or
- 124 (b) a procurement unit and a cooperative purchasing organization.
- 125 ~~[(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.
- 129 ~~[(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.
- 132 ~~[(21)]~~ (22) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowed and allocated in accordance with the contract terms and the provisions of this chapter, and a fee, if any.
- 135 ~~[(22)]~~ (23) "Days" means calendar days, unless expressly provided otherwise.
- 136 ~~[(23)]~~ (24) "Definite quantity contract" means a fixed price contract that provides for a specified amount of supplies over a specified period, with deliveries scheduled according to a specified schedule.
- 139 ~~[(24)]~~ (25) "Design professional" means:
- 140 (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects Licensing Act;
- 142 (b) an individual licensed as a professional engineer or professional land surveyor under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;
- 145 (c) an individual licensed under Title 58, Chapter 53, Landscape Architects Licensing Act, to engage in the practice of landscape architecture, as defined in Section 58-53-102; or
- 148 (d) an individual certified as a commercial interior designer under Title 58, Chapter 86, State Certification of Commercial Interior Designers Act.
- 150 ~~[(25)]~~ (26) "Design professional procurement process" means the procurement process described in Part 15, Design Professional Services.

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- 152 [~~26~~] (27) "Design professional services" means:
- 153 (a) professional services within the scope of the practice of architecture as defined in Section
58-3a-102;
- 155 (b) professional engineering as defined in Section 58-22-102;
- 156 (c) master planning and programming services;
- 157 (d) professional services within the scope of the practice of landscape architecture, as defined in Section
58-53-102; or
- 159 (e) services within the scope of the practice of commercial interior design, as defined in Section
58-86-102.
- 161 [~~27~~] (28) "Design-build" means the procurement of design professional services and construction by
the use of a single contract.
- 163 [~~28~~] (29) "Division" means the Division of Purchasing and General Services, created in Section
63A-2-101.
- 165 [~~29~~] (30) "Educational procurement unit" means:
- 166 (a) a school district;
- 167 (b) a public school, including a local school board or a charter school;
- 168 (c) the Utah Schools for the Deaf and the Blind;
- 169 (d) the Utah Education and Telehealth Network;
- 170 (e) an institution of higher education of the state described in Section 53B-1-102; or
- 171 (f) the State Board of Education.
- 172 [~~30~~] (31) "Established catalogue price" means the price included in a catalogue, price list, schedule, or
other form that:
- 174 (a) is regularly maintained by a manufacturer or contractor;
- 175 (b) is published or otherwise available for inspection by customers; and
- 176 (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.
- 179 [~~31~~] (32)
- . (a) "Executive branch procurement unit" means a department, division, office, bureau, agency, or other
organization within the state executive branch.
- 181 (b) "Executive branch procurement unit" does not include the Colorado River Authority of Utah as
provided in Section 63M-14-210.

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- 183 [~~(32)~~] (33) "Facilities division" means the Division of Facilities Construction and Management, created
in Section 63A-5b-301.
- 185 [~~(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:
- 188 (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
- 190 (b) an adjustment is required by law.
- 191 [~~(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:
- 194 (a) is based on the consumer price index or another commercially acceptable index, source, or formula;
and
- 196 (b) is not based on a percentage of the cost to the contractor.
- 197 [~~(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.
- 200 [~~(36)~~] (37) "Human services procurement item" means a procurement item used to provide services or
support to a child, youth, adult, or family.
- 202 [~~(37)~~] (38) "Immaterial error":
- 203 (a) means an irregularity or abnormality that is:
- 204 (i) a matter of form that does not affect substance; or
- 205 (ii) an inconsequential variation from a requirement of a solicitation that has no, little, or a trivial effect
on the procurement process and that is not prejudicial to other vendors; and
- 208 (b) includes:
- 209 (i) a missing signature, missing acknowledgment of an addendum, or missing copy of a professional
license, bond, or insurance certificate;
- 211 (ii) a typographical error;
- 212 (iii) an error resulting from an inaccuracy or omission in the solicitation; and
- 213 (iv) any other error that the procurement official reasonably considers to be immaterial.
- 215 [~~(38)~~] (39) "Indefinite quantity contract" means a fixed price contract that:
- 216 (a) is for an indefinite amount of procurement items to be supplied as ordered by a procurement unit;
and

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- 218 (b)
- . (i) does not require a minimum purchase amount; or
- 219 (ii) provides a maximum purchase limit.
- 220 [(39)] (40) "Independent procurement unit" means:
- 221 (a)
- . (i) a legislative procurement unit;
- 222 (ii) a judicial branch procurement unit;
- 223 (iii) an educational procurement unit;
- 224 (iv) a local ~~government~~ governmental procurement unit;
- 225 (v) a conservation district;
- 226 (vi) a local building authority;
- 227 (vii) a special district;
- 228 (viii) a public corporation;
- 229 (ix) a special service district; or
- 230 (x) the Utah Communications Authority, established in Section 63H-7a-201;
- 231 (b) the facilities division, but only to the extent of the procurement authority provided under Title 63A,
Chapter 5b, Administration of State Facilities;
- 233 (c) the attorney general, but only to the extent of the procurement authority provided under Title 67,
Chapter 5, Attorney General;
- 235 (d) the Department of Transportation, but only to the extent of the procurement authority provided
under Title 72, Transportation Code;
- 237 (e) the Department of Health and Human Services, but only for the procurement of a human services
procurement item; or
- 239 (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.
- 242 [(40)] (41)
- . (a) "Interlocal entity" means a separate political subdivision created under Title 11, Chapter 13,
Interlocal Cooperation Act.
- 244 (b) "Interlocal entity" does not include a project entity.
- 245 [(41)] (42) "Invitation for bids":
- 246 (a) means a document used to solicit:

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- 247 (i) bids to provide a procurement item to a procurement unit; or
248 (ii) quotes for a price of a procurement item to be provided to a procurement unit; and
249 (b) includes all documents attached to or incorporated by reference in a document described in
Subsection [(41)(a)] (42)(a).
- 251 [(42)] (43) "Issuing procurement unit" means a procurement unit that:
252 (a) reviews a solicitation to verify that it is in proper form;
253 (b) causes the notice of a solicitation to be published; and
254 (c) negotiates and approves the terms and conditions of a contract.
- 255 [(43)] (44) "Judicial procurement unit" means:
256 (a) the Utah Supreme Court;
257 (b) the Utah Court of Appeals;
258 (c) the Judicial Council;
259 (d) a state judicial district; or
260 (e) an office, committee, subcommittee, or other organization within the state judicial branch.
- 262 [(44)] (45) "Labor hour contract" is a contract under which:
263 (a) the supplies and materials are not provided by, or through, the contractor; and
264 (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.
- 266 [(45)] (46) "Legislative procurement unit" means:
267 (a) the Legislature;
268 (b) the Senate;
269 (c) the House of Representatives;
270 (d) a staff office of the Legislature, the Senate, or the House of Representatives; or
271 (e) a committee, subcommittee, commission, or other organization:
272 (i) within the state legislative branch; or
273 (ii)
. (A) that is created by statute to advise or make recommendations to the Legislature;
275 (B) the membership of which includes legislators; and
276 (C) for which the Office of Legislative Research and General Counsel provides staff support.
- 278 [(46)] (47) "Local building authority" means the same as that term is defined in Section 17D-2-102.
280 [(47)] (48) "Local government procurement unit" means:

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- 281 (a) a county, municipality, interlocal entity, or project entity, and each office of the county,
municipality, interlocal entity, or project entity, unless:
- 283 (i) the county or municipality adopts a procurement code by ordinance;
- 284 (ii) the interlocal entity adopts procurement rules or policies as provided in Subsection 11-13-226(2); or
- 286 (iii) the project entity adopts a procurement code through the process described in Section 11-13-316;
- 288 (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
- 290 (ii) a project entity that has adopted this entire chapter through the process described in Subsection
11-13-316; or
- 292 (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:
- 294 (i) a term in the ordinance is used in the adopted chapter; or
- 295 (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.
- 297 [~~(48)~~] (49) "Multiple award contracts" means the award of a contract for an indefinite quantity of a
procurement item to more than one person.
- 299 [~~(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.
- 302 [~~(50)~~] (51) "Municipality" means a city or town.
- 303 [~~(51)~~] (52) "Nonadopting local government procurement unit" means:
- 304 (a) a county or municipality that has not adopted Part 16, Protests, Part 17, Procurement Appeals Board,
Part 18, Appeals to Court and Court Proceedings, and Part 19, General Provisions Related to Protest
or Appeal; and
- 307 (b) each office or agency of a county or municipality described in Subsection [~~(51)(a)~~] (52)(a).
- 309 [~~(52)~~] (53) "Offeror" means a person who submits a proposal in response to a request for proposals.
- 311 [~~(53)~~] (54) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference under the
requirements of this chapter.
- 313 [~~(54)~~] (55) "Procure" means to acquire a procurement item through a procurement.
- 314

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- [~~(55)~~] (56) "Procurement" means the acquisition of a procurement item through an expenditure of public funds, or an agreement to expend public funds, including an acquisition through a public-private partnership.
- 317 [~~(56)~~] (57) "Procurement item" means an item of personal property, a technology, a service, or a construction project.
- 319 [~~(57)~~] (58) "Procurement official" means:
- 320 (a) for a procurement unit other than an independent procurement unit, the chief procurement officer;
- 322 (b) for a legislative procurement unit, the individual, individuals, or body designated in a policy adopted by the Legislative Management Committee;
- 324 (c) for a judicial procurement unit, the Judicial Council or an individual or body designated by the Judicial Council by rule;
- 326 (d) for a local government procurement unit:
- 327 (i) the legislative body of the local government procurement unit; or
- 328 (ii) an individual or body designated by the local government procurement unit;
- 329 (e) for a special district, the board of trustees of the special district or the board of trustees' designee;
- 331 (f) for a special service district, the governing body of the special service district or the governing body's designee;
- 333 (g) for a local building authority, the board of directors of the local building authority or the board of directors' designee;
- 335 (h) for a conservation district, the board of supervisors of the conservation district or the board of supervisors' designee;
- 337 (i) for a public corporation, the board of directors of the public corporation or the board of directors' designee;
- 339 (j) for a school district or any school or entity within a school district, the board of the school district or the board's designee;
- 341 (k) for a charter school, the individual or body with executive authority over the charter school or the designee of the individual or body;
- 343 (l) for an institution of higher education described in Section 53B-2-101, the president of the institution of higher education or the president's designee;
- 345 (m) for the State Board of Education, the State Board of Education or the State Board of Education's designee;

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- 347 (n) for the Utah Board of Higher Education, the Commissioner of Higher Education or the designee of
the Commissioner of Higher Education;
- 349 (o) for the Utah Communications Authority, established in Section 63H-7a-201, the executive director
of the Utah Communications Authority or the executive director's designee; or
- 352 (p)
- . (i) for the facilities division, and only to the extent of procurement activities of the facilities division
as an independent procurement unit under the procurement authority provided under Title 63A,
Chapter 5b, Administration of State Facilities, the director of the facilities division or the director's
designee;
- 356 (ii) for the attorney general, and only to the extent of procurement activities of the attorney general as
an independent procurement unit under the procurement authority provided under Title 67, Chapter
5, Attorney General, the attorney general or the attorney general's designee;
- 360 (iii) for the Department of Transportation created in Section 72-1-201, and only to the extent of
procurement activities of the Department of Transportation as an independent procurement unit
under the procurement authority provided under Title 72, Transportation Code, the executive
director of the Department of Transportation or the executive director's designee;
- 365 (iv) for the Department of Health and Human Services, and only to the extent of the procurement
activities of the Department of Health and Human Services as an independent procurement unit,
the executive director of the Department of Health and Human Services or the executive director's
designee; or
- 369 (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.
- 376 [~~58~~] (59) "Procurement unit" means:
- 377 (a) a legislative procurement unit;
- 378 (b) an executive branch procurement unit;
- 379 (c) a judicial procurement unit;
- 380 (d) an educational procurement unit;
- 381 (e) the Utah Communications Authority, established in Section 63H-7a-201;

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- 382 (f) a local government procurement unit;
- 383 (g) a special district;
- 384 (h) a special service district;
- 385 (i) a local building authority;
- 386 (j) a conservation district; or
- 387 (k) a public corporation.
- 388 [~~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:
- 390 (a) accounting;
- 391 (b) administrative law judge service;
- 392 (c) architecture;
- 393 (d) construction design and management;
- 394 (e) engineering;
- 395 (f) financial services;
- 396 (g) information technology;
- 397 (h) the law;
- 398 (i) medicine;
- 399 (j) psychiatry; or
- 400 (k) underwriting.
- 401 [~~60~~] (61) "Project entity" means the same as that term is defined in Section 11-13-103.
- 402 [~~61~~] (62) "Protest officer" means:
- 403 (a) for the division or an independent procurement unit:
- 404 (i) the procurement official;
- 405 (ii) the procurement official's designee who is an employee of the procurement unit; or
- 407 (iii) a person designated by rule made by the rulemaking authority; or
- 408 (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 .
- 411 [~~62~~] (63) "Public corporation" means the same as that term is defined in Section 63E-1-102.
- 412 [~~63~~] (64) "Public entity" means the state or any other government governmental entity within the state that expends public funds.
- 414

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- 416 [(64)] (65) "Public facility" means a building, structure, infrastructure, improvement, or other facility of a public entity.
- 418 [(65)] (66) "Public funds" means money, regardless of its source, including from the federal government, that is owned or held by a procurement unit.
- 420 [(66)] (67) "Public transit district" means a public transit district organized under Title 17B, Chapter 2a, Part 8, Public Transit District Act.
- 425 [(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.
- 426 [(68)] (69) "Qualified vendor" means a vendor who:
- 427 (a) is responsible; and
- 428 (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.
- 430 [(69)] (70) "Real property" means land and any building, fixture, improvement, appurtenance, structure, or other development that is permanently affixed to land.
- 432 [(70)] (71) "Request for information" means a nonbinding process through which a procurement unit requests information relating to a procurement item.
- 434 [(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.
- 437 [(72)] (73) "Request for proposals process" means the procurement process described in Part 7, Request for Proposals.
- 439 [(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.
- 443 [(74)] (75) "Requirements contract" means a contract:
- 444 (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

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- 447 (b) that:
- 448 (i) does not require a minimum purchase amount; or
- 449 (ii) provides a maximum purchase limit.
- 450 ~~[(75)]~~ (76) "Responsible" means being capable, in all respects, of:
- 451 (a) meeting all the requirements of a solicitation; and
- 452 (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.
- 455 ~~[(76)]~~ (77) "Responsive" means conforming in all material respects to the requirements of a solicitation.
- 457 ~~[(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.
- 460 ~~[(78)]~~ (79) "Rulemaking authority" means:
- 461 (a) for a legislative procurement unit, the Legislative Management Committee;
- 462 (b) for a judicial procurement unit, the Judicial Council;
- 463 (c)
- . (i) only to the extent of the procurement authority expressly granted to the procurement unit by statute:
- 465 (A) for the facilities division, the facilities division;
- 466 (B) for the Office of the Attorney General, the attorney general;
- 467 (C) for the Department of Transportation created in Section 72-1-201, the executive director of the Department of Transportation;
- 469 (D) for the Department of Health and Human Services, the executive director of the Department of Health and Human Services; and
- 471 (E) for any other executive branch department, division, office, or entity that has statutory procurement authority outside this chapter, the governing authority of the department, division, office, or entity; and
- 474 (ii) for each other executive branch procurement unit, the board;
- 475 (d) for a local government procurement unit:
- 476 (i) the governing body of the local government unit; or
- 477 (ii) an individual or body designated by the local government procurement unit;
- 478 (e) for a school district or a public school, the board, except to the extent of a school district's own nonadministrative rules that do not conflict with the provisions of this chapter;

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- 481 (f) for a state institution of higher education, the Utah Board of Higher Education;
- 482 (g) for the State Board of Education or the Utah Schools for the Deaf and the Blind, the State Board of
Education;
- 484 (h) for a public transit district, the chief executive of the public transit district;
- 485 (i) for a special district other than a public transit district or for a special service district, the board,
except to the extent that the board of trustees of the special district or the governing body of the
special service district makes its own rules:
- 488 (i) with respect to a subject addressed by board rules; or
- 489 (ii) that are in addition to board rules;
- 490 (j) for the Utah Educational Savings Plan, created in Section 53B-8a-103, the Utah Board of Higher
Education;
- 492 (k) for the School and Institutional Trust Lands Administration, created in Section 53C-1-201, the
School and Institutional Trust Lands Board of Trustees;
- 494 (l) for the School and Institutional Trust Fund Office, created in Section 53D-1-201, the School and
Institutional Trust Fund Board of Trustees;
- 496 (m) for the Utah Communications Authority, established in Section 63H-7a-201, the Utah
Communications Authority board, created in Section 63H-7a-203; or
- 498 (n) for any other procurement unit, the board.
- 499 [(79)] (80) "Service":
- 500 (a) means labor, effort, or work to produce a result that is beneficial to a procurement unit;
- 502 (b) includes a professional service; and
- 503 (c) does not include labor, effort, or work provided under an employment agreement or a collective
bargaining agreement.
- 505 [(80)] (81) "Small purchase process" means the procurement process described in Section 63G-6a-506.
- 507 [(81)] (82) "Sole source contract" means a contract resulting from a sole source procurement.
- 508 [(82)] (83) "Sole source procurement" means a procurement without competition pursuant to a
determination under Subsection 63G-6a-802(1)(a) that there is only one source for the procurement
item.
- 511 [(83)] (84) "Solicitation" means an invitation for bids, request for proposals, or request for statement of
qualifications.
- 513 [(84)] (85) "Solicitation response" means:

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- 514 (a) a bid submitted in response to an invitation for bids;
- 515 (b) a proposal submitted in response to a request for proposals; or
- 516 (c) a statement of qualifications submitted in response to a request for statement of qualifications.
- 518 [(85)] (86) "Special district" means the same as that term is defined in Section 17B-1-102.
- 519 [(86)] (87) "Special service district" means the same as that term is defined in Section 17D-1-102.
- 521 [(87)] (88) "Specification" means any description of the physical or functional characteristics or of
the nature of a procurement item included in an invitation for bids or a request for proposals, or
otherwise specified or agreed to by a procurement unit, including a description of:
- 525 (a) a requirement for inspecting or testing a procurement item; or
- 526 (b) preparing a procurement item for delivery.
- 527 [(88)] (89) "Standard procurement process" means:
- 528 (a) the bidding process;
- 529 (b) the request for proposals process;
- 530 (c) the approved vendor list process;
- 531 (d) the small purchase process; or
- 532 (e) the design professional procurement process.
- 533 [(89)] (90) "State cooperative contract" means a contract awarded by the division for and in behalf of all
public entities.
- 535 [(90)] (91) "Statement of qualifications" means a written statement submitted to a procurement unit in
response to a request for statement of qualifications.
- 537 [(91)] (92) "Subcontractor":
- 538 (a) means a person under contract to perform part of a contractual obligation under the control of the
contractor, whether the person's contract is with the contractor directly or with another person who
is under contract to perform part of a contractual obligation under the control of the contractor; and
- 542 (b) includes a supplier, distributor, or other vendor that furnishes supplies or services to a contractor.
- 544 [(92)] (93) "Technology" means the same as "information technology," as defined in Section
63A-16-102.
- 546 [(93)] (94) "Tie bid" means that the lowest responsive bids of responsible bidders are identical in price.
- 548 [(94)] (95) "Time and materials contract" means a contract under which the contractor is paid:
- 550 (a) the actual cost of direct labor at specified hourly rates;
- 551 (b) the actual cost of materials and equipment usage; and

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552 (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.

554 [~~(95)~~] (96) "Transitional costs":

555 (a) means the costs of changing:

556 (i) from an existing provider of a procurement item to another provider of that procurement item; or

558 (ii) from an existing type of procurement item to another type;

559 (b) includes:

560 (i) training costs;

561 (ii) conversion costs;

562 (iii) compatibility costs;

563 (iv) costs associated with system downtime;

564 (v) disruption of service costs;

565 (vi) staff time necessary to implement the change;

566 (vii) installation costs; and

567 (viii) ancillary software, hardware, equipment, or construction costs; and

568 (c) does not include:

569 (i) the costs of preparing for or engaging in a procurement process; or

570 (ii) contract negotiation or drafting costs.

571 [~~(96)~~] (97) "Vendor":

572 (a) means a person who is seeking to enter into a contract with a procurement unit to provide a
procurement item; and

574 (b) includes:

575 (i) a bidder;

576 (ii) an offeror;

577 (iii) an approved vendor;

578 (iv) a design professional; and

579 (v) a person who submits an unsolicited proposal under Section 63G-6a-712.

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

579 **63G-6a-109. Issuing procurement unit and conducting procurement unit.**

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- (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:
- 586 (a) the division is the issuing procurement unit; and
587 (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.
- 590 (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.
- 592 (3) A conducting procurement unit is responsible for contract administration.
- 591 Section 3. Section **63G-6a-303** is amended to read:
592 **63G-6a-303. Role, duties, and authority of chief procurement officer.**
- 595 (1) The chief procurement officer:
596 (a) is the director of the division;
597 (b) serves as the central procurement officer of the state;
598 (c) serves as a voting member of the board; and
599 (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.
- 605 (2) Except as otherwise provided in this chapter, the chief procurement officer shall:
606 (a) develop procurement policies and procedures supporting ethical procurement practices, fair and open competition among vendors, and transparency within the state's procurement process;
609 (b) administer the state's cooperative purchasing program, including state cooperative contracts and associated administrative fees;
611 (c) enter into an agreement with a public entity for services provided by the division, if the agreement is in the best interest of the state;
613 (d) ensure the division's compliance with any applicable law, rule, or policy, including a law, rule, or policy applicable to the division's role as an issuing procurement unit or conducting procurement unit, or as the state's central procurement organization;
616 (e) manage the division's electronic procurement system;

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- 617 (f) oversee the recruitment, training, career development, certification requirements, and performance
evaluation of the division's procurement personnel;
- 619 (g) make procurement training available to procurement units and persons who do business with
procurement units;
- 621 (h) provide exemplary customer service and continually improve the division's procurement operations;
- 623 (i) exercise all other authority, fulfill all other duties and responsibilities, and perform all other
functions authorized under this chapter; and
- 625 (j) ensure that any training described in this Subsection (2) complies with Chapter 22, State Training
and Certification Requirements.
- 627 (3) With respect to a procurement or contract over which the chief procurement officer has authority
under this chapter, the chief procurement officer, except as otherwise provided in this chapter:
- 630 (a) shall:
- 631 (i) manage and supervise a procurement to ensure to the extent practicable that taxpayers receive the
best value;
- 633 (ii) prepare and issue standard specifications for procurement items;
- 634 (iii) review contracts, coordinate contract compliance, conduct contract audits, and approve change
orders;
- 636 (iv) in accordance with Section 63G-6a-109.5, coordinate with the Division of Technology Services,
created in Section 63A-16-103, with respect to the procurement of information technology services
by an executive branch procurement unit;
- 640 (v) correct, amend, or cancel a procurement at any stage of the procurement process if the procurement
is out of compliance with this chapter or a board rule;
- 642 (vi) after consultation with the attorney general's office, correct, amend, or cancel a contract at any time
during the term of the contract if:
- 644 (A) the contract is out of compliance with this chapter or a board rule; and
- 645 (B) the chief procurement officer determines that correcting, amending, or canceling the contract is in
the best interest of the state; and
- 647 (vii) make a reasonable attempt to resolve a contract dispute, in coordination with the attorney general's
office; and
- 649 (b) may:
- 650

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- 652 (i) delegate limited purchasing authority to a state agency, with appropriate oversight and control to ensure compliance with this chapter;
- 654 (ii) delegate duties and authority to an employee of the division, as the chief procurement officer considers appropriate;
- 656 (iii) negotiate and settle contract overcharges, undercharges, and claims, in accordance with the law and after consultation with the attorney general's office;
- 661 (iv) authorize a procurement unit to make a procurement pursuant to a regional solicitation, as defined in Subsection 63G-6a-2105(7), even if the procurement item is also offered under a state cooperative contract, if the chief procurement officer determines that the procurement pursuant to a regional solicitation is in the best interest of the acquiring procurement unit; and
- 662 (v) remove an individual from the procurement process or contract administration for:
 - 664 (A) having a conflict of interest or the appearance of a conflict of interest with a person responding to a solicitation or with a contractor;
 - 666 (B) having a bias or the appearance of bias for or against a person responding to a solicitation or for or against a contractor;
 - 667 (C) making an inconsistent or unexplainable score for a solicitation response;
 - 669 (D) having inappropriate contact or communication with a person responding to a solicitation;
 - 671 (E) socializing inappropriately with a person responding to a solicitation or with a contractor;
 - 674 (F) engaging in any other action or having any other association that causes the chief procurement officer to conclude that the individual cannot fairly evaluate a solicitation response or administer a contract; or
 - 675 (G) any other violation of a law, rule, or policy.
- 678 (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).
- 682 (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

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procurement unit, to ensure compliance with this chapter, rules made by the applicable rulemaking authority, and division policies.

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

688 **63G-6a-506. Small purchases.**

691 (1) As used in this section:

692 (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.

695 (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.

698 (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.

702 (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.

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

706 (i) establishing expenditure thresholds, including:

707 (A) an annual cumulative threshold;

708 (B) an individual procurement item threshold; and

709 (C) a single procurement aggregate threshold;

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

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

713 (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).

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- (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.
- 721 (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).
- 725 (5) Subsection (4) does not apply if:
- 726 (a) the procurement item is obtained for an unanticipated, urgent, or emergency condition, including:
- 728 (i) an item needed to avoid stopping a public construction project;
- 729 (ii) an immediate repair to a facility or equipment; or
- 730 (iii) another emergency condition; or
- 731 (b) the chief procurement officer or the procurement official of a procurement unit that is an executive branch procurement unit with independent procurement authority:
- 733 (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:
- 735 (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;
- 739 (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;
- 742 (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 obtained outside of the state contract;
- 745 (D) the quality of the procurement item under the state contract with the quality of the procurement item if the procurement item is obtained outside of the state contract; and
- 748 (E) the ability of the vendor under the state contract to match the quoted cost of the procurement item if the procurement item is obtained outside of the state contract;
- 751 (ii) for a procurement item that, if defective in its manufacture, installation, or performance, may result in serious physical injury, death, or substantial property damage, determines in writing that the terms and conditions, relating to liability for injury, death, or property damage, available from the

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source other than the contractor who holds the state contract, are similar to, or better than, the terms and conditions available under the state contract; and

- 757 (iii) grants an exception, in writing, to the requirement described in Subsection (4).
- 758 (6) Except as otherwise expressly provided in this section, a procurement unit:
- 759 (a) may not use the small purchase standard procurement process described in this section for ongoing, continuous, and regularly scheduled procurements that exceed the annual cumulative threshold; and
- 762 (b) shall make its ongoing, continuous, and regularly scheduled procurements that exceed the annual cumulative threshold through a contract awarded through another standard procurement process described in this chapter or an applicable exception to another standard procurement process, described in Part 8, Exceptions to Procurement Requirements.
- 767 (7) This section does not prohibit regularly scheduled payments for a procurement item obtained under another provision of this chapter.
- 769 (8)
- . (a) It is unlawful for a person knowingly to divide a single procurement into multiple smaller procurements, including by dividing an invoice or purchase order into multiple invoices or purchase orders, if:
- 772 (i) the single procurement would not have qualified as a small purchase under this section;
- 774 (ii) one or more of the multiple smaller procurements qualify as a small purchase under this section; and
- 776 (iii) the division is done with the intent to:
- 777 (A) avoid having to use a standard procurement process, other than the small purchase process, that the person would otherwise be required to use for the single procurement; or
- 780 (B) make one or more of the multiple smaller procurements fall below a small purchase expenditure threshold established by rule under Subsection (2)(b) that the single procurement would not have fallen below without the division.
- 783 (b) A violation of Subsection (8)(a) is subject to penalties as provided in Subsection 63G-6a-2404.3(2).
- 785 (9) The Division of Finance within the Department of Government Operations may conduct an audit of an executive branch procurement unit to verify compliance with the requirements of this section.
- 788 (10) An executive branch procurement unit may not make a small purchase after January 1, 2014, unless the chief procurement officer certifies that the person responsible for procurements in the

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procurement unit has satisfactorily completed training on this 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.**

794 (1) As used in this section:

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

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

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

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

802 [~~(e)] (b)~~

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

807 (ii) A community rehabilitation program:

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

810 (B)

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

812 (II) is a supported employment program approved by the Utah State Office of Rehabilitation created in Section 35A-1-202;

814 (C) has its principal place of business in Utah;

815 (D) produces [~~any~~] a good provided under this section in Utah; and

816 (E) provides [~~any~~] a service that is provided by individuals with a majority of whom domiciled in Utah.

818 [~~(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.~~

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

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

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- 823 (a) the director of the division or the director's designee;
- 824 (b) the director of the Utah State Office of Rehabilitation or the director's designee; and
- 825 (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.
- 827 (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.
- 831 (b) The advisory board shall:
- 832 [(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);
- 836 [(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);
- 839 [(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);
- 844 [(d)] (iv) ~~[reviewing bids received by a community rehabilitation program]~~ review a community
rehabilitation program's bid; and
- 846 [(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).
- 849 (5) The provisions of Subsections (4) and (7)(a) are an exception to the procurement provisions under
this chapter.
- 851 (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.

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~~[(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.]~~

858 ~~[(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:

861 (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;

864 (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;

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

869 (iv) under the advisory board's discretion:

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

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

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

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

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

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

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

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

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

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- (a) may submit a bid to the advisory board at any time and not necessarily in response to an invitation for bids; and
- 892 (b) shall certify on ~~[any bid it]~~ the bid that the community rehabilitation program submits to the advisory board or to a procurement unit under this section that ~~[it]~~ the community rehabilitation program is claiming a preference under this section.
- 895 (9) During a fiscal year, the requirement for a procurement unit to purchase ~~[goods and services produced by a community rehabilitation program]~~ a good or service that a community rehabilitation program produces under the preferred procurement list under Subsection (7) does not apply if the division determines that the total amount of procurement contracts with community rehabilitation programs has reached \$5 million for that fiscal year.
- 901 (10) In the case of conflict between a purchase under this section and a purchase under Section 63G-6a-804, this section prevails.

901 Section 6. Section **6** is enacted to read:

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

An award of a **procurement** contract under this chapter:

- 906 (1) is not an offer or an acceptance of a bid, proposal, estimate, quote, or an offer; and
- 907 (2) does not create a contract.

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

907 **63G-6a-1203. Provisions not to be included in a contract -- {Exemption} Exemptions --**
Limitation of liability and damages.

- 910 {(1) {Except as provided under Subsection (2), a procurement unit may not enter into a contract under this chapter if a provision of the contract: }
- 912 {(a) requires the procurement unit to defend, indemnify, or hold harmless the vendor or another person; }
- 914 {(b) grants the vendor the unilateral authority to modify a term of the contract; }
- 915 {(c) in the event of a dispute, litigation, or another adversarial proceeding, requires the procurement unit to be represented by legal counsel other than: }
- 917 {(i) the attorney general; }
- 918 {(ii) other legal counsel the procurement unit chooses; or }
- 919 {(iii) if the vendor is obligated to the state under an indemnification provision of the contract, other legal counsel the vendor chooses, subject to the written consent of the procurement unit; }

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- 922 ~~{(d) requires the terms of the contract to be governed by, or construed in accordance, with the laws of a state other than this state;}~~
- 924 ~~{(e) requires a claim or dispute arising under the contract to be resolved or settled by binding arbitration;}~~
- 926 ~~{(f) {is inconsistent with Chapter 2, Government Records Access and Management Act; or}~~
- 927 ~~{(g) { } A contract, including an amendment to an existing contract, entered into under this chapter may not require that a design professional{ } requires a design professional to} indemnify another { } from liability claims that arise{ } person from a liability claim arising} out of the design professional's services, unless the liability claim arises from{:}~~
- 931 ~~{(i) the design professional's negligent act, wrongful act, error{ } or omission{ } ;{-or omission; } or~~
- 933 ~~{(ii) { } other{ } another} liability imposed by law.}]~~
- 934 ~~{(2)}~~
- . ~~{(a) The assistant attorney general may exempt a contract from a prohibition under Subsection (1) (a) through (g), as the relative positions of the contracting parties, market conditions, or other circumstances justify.}~~
- 937 ~~{(b) The assistant attorney general shall memorialize in writing to the contracting procurement unit;}~~
- 939 ~~{(i) any exemption granted under Subsection (2)(a); and}~~
- 940 ~~{(ii) the basis for any exemption granted.}~~
- 941 ~~[(2){ } {(3)}] { } Subsection (1) may not be waived by contract{ } Subject to Subsection (4), a procurement unit may not enter into a contract with a vendor that waives a prohibition described in Subsection (1)};]~~
- 944 ~~[(3){ } {(4)}] Notwithstanding { } Subsections (1) and (2){ } Subsection (1)(g) or (3)}, a { } design professional may be required{ } procurement unit may require a design professional} to indemnify a person for whom the design professional has direct or indirect control or responsibility.}]~~
- 918 (1) As used in this section, "governmental entity" means the same as that term is defined in Section 63G-7-102.
- 920 (2) This section does not apply to:
- 921 (a) a procurement contract that becomes operative or enforceable before the effective date of this section; or
- 923 (b) the extension or renewal of a contract described in Subsection (2)(a).
- 924 (3)

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- 927 (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.
- 927 (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.
- 930 (4) A provision is void and unenforceable under Subsection (3)(a) if the provision:
- 931 (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;
- 934 (b) requires a governmental entity to indemnify, defend, or hold harmless another person;
- 935 (c) restricts a governmental entity's ability to seek relief in state court;
- 936 (d) subjects a governmental entity to binding arbitration or other form of dispute resolution outside the courts;
- 938 (e) disallows the procurement unit from having legal counsel and representation from:
- 939 (i) legal counsel that the procurement unit chooses;
- 940 (ii) the attorney general; or
- 941 (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;
- 944 (f) subject to Subsection (5):
- 945 (i) subjects a procurement contract or a party to the contract to the laws of any 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 by law or for any legitimate governmental purpose;
- 950 (h) allows a vendor to unilaterally modify any part of the procurement contract, including any provision to which the contract contemplates giving legal effect upon the vendor providing notice to the procurement unit of the modification or of the created legal effect; and
- 954 (i) subject to Subsection (6):
- 955

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- 958 (i) requires a governmental entity to maintain insurance coverage beyond the types and limits required by the state risk manager appointed under Section 63A-4-101.5, or to name an additional insured under that coverage;
- 960 (ii) allows a vendor to automatically renew a procurement contract or that creates a contractual term in violation of the terms permitted under Section 63G-6a-1204; or
- 963 (iii) limits the liability of a vendor or any third-party for bodily injury, death, or damage to tangible property caused by the negligence or willful misconduct of a vendor, a third-party, or the vendor's or third-party's employees or agents.
- 968 (5) The assistant attorney general or authorized legal counsel for the procurement unit that will sign a procurement contract may, via a signed, express, written authorization made prior to the formation of the contract, exempt the contract from a provision described in Subsection (4)(f), if the assistant attorney general or authorized legal counsel determines that an exemption is necessary to promote the best interests of the state 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.
- 976 (6) The procurement official for a procurement unit seeking to enter into a procurement contract may, via a signed, express, written authorization made prior to the formation of the contract, exempt the contract from a provision described in Subsection (4)(i), if the contract indicates the procurement unit's intent to include the provision, with explicit reference to this section.
- 980 (7) Notwithstanding any provision of a procurement contract to the contrary, under no circumstance may the state or a procurement unit be held liable for any special, incidental, indirect, or consequential damages arising from or relating to a procurement contract.

Section 8. **Effective date.**

This bill takes effect on May 7, 2025.

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