

Michael K. McKell proposes the following substitute bill:

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

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
62 mutual agreement of the parties to the contract.

63 ~~[(9)]~~ (10) "Chief procurement officer" means the individual appointed under Section
64 63A-2-102.

65 ~~[(10)]~~ (11) "Conducting procurement unit" means a procurement unit that conducts all
66 aspects of a procurement:

67 (a) except:

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

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

70 (b) including:

71 (i) preparing any solicitation document;

72 (ii) appointing an evaluation committee;

73 (iii) conducting the evaluation process, except the process relating to scores
74 calculated for costs of proposals;

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

76 (v) negotiating the terms and conditions of a contract, subject to the issuing
77 procurement unit's approval; and

78 (vi) contract administration.

79 ~~[(11)]~~ (12) "Conservation district" means the same as that term is defined in Section
80 17D-3-102.

81 ~~[(12)]~~ (13) "Construction project":

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

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

87 ~~[(13)]~~ (14) "Construction manager/general contractor":

88 (a) means a contractor who enters into a contract:

89 (i) for the management of a construction project; and

90 (ii) that allows the contractor to subcontract for additional labor and materials that are
91 not included in the contractor's cost proposal submitted at the time of the
92 procurement of the contractor's services; and

93 (b) does not include a contractor whose only subcontract work not included in the
94 contractor's cost proposal submitted as part of the procurement of the contractor's
95 services is to meet subcontracted portions of change orders approved within the
96 scope of the project.

97 ~~[(14)]~~ (15) "Construction subcontractor":

98 (a) means a person under contract with a contractor or another subcontractor to provide
99 services or labor for the design or construction of a construction project;

100 (b) includes a general contractor or specialty contractor licensed or exempt from
101 licensing under Title 58, Chapter 55, Utah Construction Trades Licensing Act; and

102 (c) does not include a supplier who provides only materials, equipment, or supplies to a
103 contractor or subcontractor for a construction project.

104 ~~[(15)]~~ (16) "Contract" means an agreement for a procurement.

105 ~~[(16)]~~ (17) "Contract administration" means all functions, duties, and responsibilities
106 associated with managing, overseeing, and carrying out a contract between a
107 procurement unit and a contractor, including:

108 (a) implementing the contract;

109 (b) ensuring compliance with the contract terms and conditions by the conducting
110 procurement unit and the contractor;

111 (c) executing change orders;

112 (d) processing contract amendments;

113 (e) resolving, to the extent practicable, contract disputes;

114 (f) curing contract errors and deficiencies;

115 (g) terminating a contract;

116 (h) measuring or evaluating completed work and contractor performance;

117 (i) computing payments under the contract; and

118 (j) closing out a contract.

119 ~~[(17)]~~ (18) "Contractor" means a person who is awarded a contract with a procurement unit.

120 ~~[(18)]~~ (19) "Cooperative procurement" means procurement conducted by, or on behalf of:

121 (a) more than one procurement unit; or

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

123 ~~[(19)]~~ (20) "Cooperative purchasing organization" means an organization, association, or
124 alliance of purchasers established to combine purchasing power in order to obtain the
125 best value for the purchasers by engaging in procurements in accordance with Section
126 63G-6a-2105.

127 ~~[(20)]~~ (21) "Cost-plus-a-percentage-of-cost contract" means a contract under which the
128 contractor is paid a percentage of the total actual expenses or costs in addition to the
129 contractor's actual expenses or costs.

130 ~~[(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.

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

~~[(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.

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

- (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects Licensing Act;
- (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;
- (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
- (d) an individual certified as a commercial interior designer under Title 58, Chapter 86, State Certification of Commercial Interior Designers Act.

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

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

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

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

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

~~[(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.

~~[(36)]~~ (37) "Human services procurement item" means a procurement item used to provide

services or support to a child, youth, adult, or family.

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

(a) means an irregularity or abnormality that is:

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

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

(b) includes:

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

(ii) a typographical error;

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

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

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

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

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

(ii) provides a maximum purchase limit.

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

(a)(i) a legislative procurement unit;

(ii) a judicial branch procurement unit;

(iii) an educational procurement unit;

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

(v) a conservation district;

(vi) a local building authority;

(vii) a special district;

(viii) a public corporation;

(ix) a special service district; or

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

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

(c) the attorney general, but only to the extent of the procurement authority provided under Title 67, Chapter 5, Attorney General;

- 233 (d) the Department of Transportation, but only to the extent of the procurement authority
234 provided under Title 72, Transportation Code;
- 235 (e) the Department of Health and Human Services, but only for the procurement of a
236 human services procurement item; or
- 237 (f) any other executive branch department, division, office, or entity that has statutory
238 procurement authority outside this chapter, but only to the extent of that statutory
239 procurement authority.
- 240 ~~[(40)]~~ (41)(a) "Interlocal entity" means a separate political subdivision created under
241 Title 11, Chapter 13, Interlocal Cooperation Act.
- 242 (b) "Interlocal entity" does not include a project entity.
- 243 ~~[(41)]~~ (42) "Invitation for bids":
- 244 (a) means a document used to solicit:
- 245 (i) bids to provide a procurement item to a procurement unit; or
- 246 (ii) quotes for a price of a procurement item to be provided to a procurement unit; and
- 247 (b) includes all documents attached to or incorporated by reference in a document
248 described in Subsection ~~[(41)(a)]~~ (42)(a).
- 249 ~~[(42)]~~ (43) "Issuing procurement unit" means a procurement unit that:
- 250 (a) reviews a solicitation to verify that it is in proper form;
- 251 (b) causes the notice of a solicitation to be published; and
- 252 (c) negotiates and approves the terms and conditions of a contract.
- 253 ~~[(43)]~~ (44) "Judicial procurement unit" means:
- 254 (a) the Utah Supreme Court;
- 255 (b) the Utah Court of Appeals;
- 256 (c) the Judicial Council;
- 257 (d) a state judicial district; or
- 258 (e) an office, committee, subcommittee, or other organization within the state judicial
259 branch.
- 260 ~~[(44)]~~ (45) "Labor hour contract" is a contract under which:
- 261 (a) the supplies and materials are not provided by, or through, the contractor; and
- 262 (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and profit
263 for a specified number of labor hours or days.
- 264 ~~[(45)]~~ (46) "Legislative procurement unit" means:
- 265 (a) the Legislature;
- 266 (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.

~~[(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;

- (i) for a public corporation, the board of directors of the public corporation or the board of directors' designee;
- (j) for a school district or any school or entity within a school district, the board of the school district or the board's designee;
- (k) for a charter school, the individual or body with executive authority over the charter school or the designee of the individual or body;
- (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;
- (m) for the State Board of Education, the State Board of Education or the State Board of Education's designee;
- (n) for the Utah Board of Higher Education, the Commissioner of Higher Education or the designee of the Commissioner of Higher Education;
- (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
- (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;
- (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;
- (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;
- (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
- (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

369 procurement activities of the department, division, office, or entity as an
370 independent procurement unit under the procurement authority provided outside
371 this chapter for the department, division, office, or entity, the chief executive
372 officer of the department, division, office, or entity or the chief executive officer's
373 designee.

374 [~~(58)~~] (59) "Procurement unit" means:

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

386 [~~(59)~~] (60) "Professional service" means labor, effort, or work that requires specialized
387 knowledge, expertise, and discretion, including labor, effort, or work in the field of:

- 388 (a) accounting;
- 389 (b) administrative law judge service;
- 390 (c) architecture;
- 391 (d) construction design and management;
- 392 (e) engineering;
- 393 (f) financial services;
- 394 (g) information technology;
- 395 (h) the law;
- 396 (i) medicine;
- 397 (j) psychiatry; or
- 398 (k) underwriting.

399 [~~(60)~~] (61) "Project entity" means the same as that term is defined in Section 11-13-103.

400 [~~(61)~~] (62) "Protest officer" means:

- 401 (a) for the division or an independent procurement unit:
- 402 (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.

437 ~~[(73)]~~ (74) "Request for statement of qualifications" means a document used to solicit
438 information about the qualifications of a person interested in responding to a potential
439 procurement, including all other documents attached to that document or incorporated in
440 that document by reference.

441 ~~[(74)]~~ (75) "Requirements contract" means a contract:

442 (a) under which a contractor agrees to provide a procurement unit's entire requirements
443 for certain procurement items at prices specified in the contract during the contract
444 period; and

445 (b) that:

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

447 (ii) provides a maximum purchase limit.

448 ~~[(75)]~~ (76) "Responsible" means being capable, in all respects, of:

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

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

453 ~~[(76)]~~ (77) "Responsive" means conforming in all material respects to the requirements of a
454 solicitation.

455 ~~[(77)]~~ (78) "Rule" includes a policy or regulation adopted by the rulemaking authority, if
456 adopting a policy or regulation is the method the rulemaking authority uses to adopt
457 provisions that govern the applicable procurement unit.

458 ~~[(78)]~~ (79) "Rulemaking authority" means:

459 (a) for a legislative procurement unit, the Legislative Management Committee;

460 (b) for a judicial procurement unit, the Judicial Council;

461 (c)(i) only to the extent of the procurement authority expressly granted to the
462 procurement unit by statute:

463 (A) for the facilities division, the facilities division;

464 (B) for the Office of the Attorney General, the attorney general;

465 (C) for the Department of Transportation created in Section 72-1-201, the
466 executive director of the Department of Transportation;

467 (D) for the Department of Health and Human Services, the executive director of
468 the Department of Health and Human Services; and

469 (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
538 or with another person who is under contract to perform part of a contractual

- 539 obligation under the control of the contractor; and
- 540 (b) includes a supplier, distributor, or other vendor that furnishes supplies or services to
- 541 a contractor.
- 542 ~~[(92)]~~ (93) "Technology" means the same as "information technology," as defined in Section
- 543 63A-16-102.
- 544 ~~[(93)]~~ (94) "Tie bid" means that the lowest responsive bids of responsible bidders are
- 545 identical in price.
- 546 ~~[(94)]~~ (95) "Time and materials contract" means a contract under which the contractor is
- 547 paid:
- 548 (a) the actual cost of direct labor at specified hourly rates;
- 549 (b) the actual cost of materials and equipment usage; and
- 550 (c) an additional amount, expressly described in the contract, to cover overhead and
- 551 profit, that is not based on a percentage of the cost to the contractor.
- 552 ~~[(95)]~~ (96) "Transitional costs":
- 553 (a) means the costs of changing:
- 554 (i) from an existing provider of a procurement item to another provider of that
- 555 procurement item; or
- 556 (ii) from an existing type of procurement item to another type;
- 557 (b) includes:
- 558 (i) training costs;
- 559 (ii) conversion costs;
- 560 (iii) compatibility costs;
- 561 (iv) costs associated with system downtime;
- 562 (v) disruption of service costs;
- 563 (vi) staff time necessary to implement the change;
- 564 (vii) installation costs; and
- 565 (viii) ancillary software, hardware, equipment, or construction costs; and
- 566 (c) does not include:
- 567 (i) the costs of preparing for or engaging in a procurement process; or
- 568 (ii) contract negotiation or drafting costs.
- 569 ~~[(96)]~~ (97) "Vendor":
- 570 (a) means a person who is seeking to enter into a contract with a procurement unit to
- 571 provide a procurement item; and
- 572 (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 state's procurement process;

- (b) administer the state's cooperative purchasing program, including state cooperative contracts and associated administrative fees;
- (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;
- (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;
- (e) manage the division's electronic procurement system;
- (f) oversee the recruitment, training, career development, certification requirements, and performance evaluation of the division's procurement personnel;
- (g) make procurement training available to procurement units and persons who do business with procurement units;
- (h) provide exemplary customer service and continually improve the division's procurement operations;
- (i) exercise all other authority, fulfill all other duties and responsibilities, and perform all other functions authorized under this chapter; and
- (j) ensure that any training described in this Subsection (2) complies with Chapter 22, State Training and Certification Requirements.

(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:

- (a) shall:
 - (i) manage and supervise a procurement to ensure to the extent practicable that taxpayers receive the best value;
 - (ii) prepare and issue standard specifications for procurement items;
 - (iii) review contracts, coordinate contract compliance, conduct contract audits, and approve change orders;
 - (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;
 - (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;
 - (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
- 674 chief procurement officer's authority over a procurement described in Subsection

675 (3)(a)(iv).

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

680 (6) Except as otherwise provided in this chapter, the chief procurement officer shall review,
681 monitor, and audit the procurement activities and delegated procurement authority of an
682 executive branch procurement unit, except to the extent that an executive branch
683 procurement unit is designated under Subsection [~~63G-6a-103(38)(b), (c), (d), or (e)~~]
684 63G-6a-103(40)(b), (c), (d), or (e) as an independent procurement unit, to ensure
685 compliance with this chapter, rules made by the applicable rulemaking authority, and
686 division policies.

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

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

689 (1) As used in this section:

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

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

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

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

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

704 (i) establishing expenditure thresholds, including:

705 (A) an annual cumulative threshold;

706 (B) an individual procurement item threshold; and

707 (C) a single procurement aggregate threshold;

708 (ii) establishing procurement requirements relating to the thresholds described in

- 709 Subsection (2)(b)(i); and
- 710 (iii) providing for the use of electronic, telephone, or written quotes.
- 711 (c) If a procurement unit obtains administrative law judge service through a small
- 712 purchase standard procurement process, rules made under Subsection (2)(a) shall
- 713 provide that the process for the procurement of administrative law judge service
- 714 include an evaluation committee described in Subsection 63G-6a-116(3).
- 715 (3) Expenditures made under this section by a procurement unit may not exceed a threshold
- 716 established by the rulemaking authority, unless the procurement official gives written
- 717 authorization to exceed the threshold that includes the reasons for exceeding the
- 718 threshold.
- 719 (4) Except as provided in Subsection (5), an executive branch procurement unit may not
- 720 obtain a procurement item through a small purchase standard procurement process if the
- 721 procurement item may be obtained through a state cooperative contract or a contract
- 722 awarded by the chief procurement officer under Subsection 63G-6a-2105(1).
- 723 (5) Subsection (4) does not apply if:
- 724 (a) the procurement item is obtained for an unanticipated, urgent, or emergency
- 725 condition, including:
- 726 (i) an item needed to avoid stopping a public construction project;
- 727 (ii) an immediate repair to a facility or equipment; or
- 728 (iii) another emergency condition; or
- 729 (b) the chief procurement officer or the procurement official of a procurement unit that
- 730 is an executive branch procurement unit with independent procurement authority:
- 731 (i) determines in writing that it is in the best interest of the procurement unit to obtain
- 732 an individual procurement item outside of the state contract, comparing:
- 733 (A) the contract terms and conditions applicable to the procurement item under the
- 734 state contract with the contract terms and conditions applicable to the
- 735 procurement item if the procurement item is obtained outside of the state
- 736 contract;
- 737 (B) the maintenance and service applicable to the procurement item under the state
- 738 contract with the maintenance and service applicable to the procurement item if
- 739 the procurement item is obtained outside of the state contract;
- 740 (C) the warranties applicable to the procurement item under the state contract with
- 741 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
- 810 (II) is a supported employment program approved by the Utah State Office of

811 Rehabilitation created in Section 35A-1-202;

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

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

814 (E) provides ~~[any]~~ a service that is provided by individuals with a majority of

815 whom domiciled in Utah.

816 ~~[(d)]~~ (c) "Person with a disability" means a person with ~~[any]~~ a disability as defined by

817 and covered under the Americans with Disabilities Act of 1990, 42 U.S.C. 12102.

818 (2) There is created within the division the Purchasing from Persons with Disabilities

819 Advisory Board.

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

821 (a) the director of the division or the director's designee;

822 (b) the director of the Utah State Office of Rehabilitation or the director's designee; and

823 (c) a representative of the private business community who shall be appointed to a

824 three-year term by the governor with the advice and consent of the Senate.

825 ~~(4)(a)~~ The advisory board shall meet, as needed, to facilitate ~~[the procurement of goods~~

826 ~~and services from community rehabilitation programs by a procurement unit under~~

827 ~~this chapter by:] a procurement unit's procurement of a good or service under this~~

828 ~~chapter from a community rehabilitation program.~~

829 (b) The advisory board shall:

830 ~~[(a)]~~ (i) ~~[identifying goods and services that are available from community~~

831 ~~rehabilitation programs]~~ identify the good or service that is available from a

832 community rehabilitation program in accordance with the requirements of

833 Subsection (7);

834 ~~[(b)]~~ (ii) ~~[approving prices]~~ approve a price in accordance with Subsection (7)(c) for [

835 ~~goods and services that are identified under Subsection (4)(a)]~~ the good or service

836 that the advisory board identifies under Subsection (4)(b)(i);

837 ~~[(c)]~~ (iii) ~~[developing, maintaining, and approving a preferred procurement contract~~

838 ~~list of goods and services identified and priced under Subsections (4)(a) and (b)]~~

839 develop, maintain, and approve a preferred procurement contract list of the goods

840 and services that the advisory board identifies and prices under Subsections

841 (4)(b)(i) and (ii);

842 ~~[(d)]~~ (iv) ~~[reviewing bids received by a community rehabilitation program]~~ review a

843 community rehabilitation program's bid; and

844 ~~[(e)]~~ (v) ~~[awarding and renewing]~~ award and renew specified contracts for set contract

- 845 times, without competitive bidding, for ~~[the]~~ a procurement unit's purchase of [
846 ~~goods and services]~~ a good or service under Subsection (7).
- 847 (5) The provisions of Subsections (4) and (7)(a) are an exception to the procurement
848 provisions under this chapter.
- 849 (6)(a) The advisory board may ~~[designate a central not-for-profit association, appoint its~~
850 ~~members, and establish guidelines for its duties]~~ enter into an agreement with a person
851 to provide administrative support to the advisory board.
- 852 ~~[(b) The designated central not-for-profit association serves at the pleasure of the~~
853 ~~advisory board. The central not-for-profit association or its individual members may~~
854 ~~be removed by the advisory board at any time by a majority vote of the advisory~~
855 ~~board.]~~
- 856 ~~[(e)]~~ (b) Subject to the advisory board guidelines and discretion, ~~[a designated central~~
857 ~~not-for-profit association may be assigned to perform the following duties]~~ a person
858 described in Subsection (6)(a) shall:
- 859 (i) identify ~~[qualified]~~ a community rehabilitation [programs] program and the ~~[goods~~
860 ~~and services that they provide or have]~~ good or service that the community
861 rehabilitation program provides or has the potential to provide;
- 862 (ii) ~~[help ensure that goods and services are]~~ help ensure that a community
863 rehabilitation program's good or service is provided at reasonable quality and
864 delivery levels;
- 865 (iii) recommend pricing for ~~[goods and services]~~ a community rehabilitation
866 program's good or service;
- 867 (iv) under the advisory board's discretion:
- 868 (A) review ~~[bids and recommend the award of contracts under the advisory~~
869 ~~board's direction]~~ a community rehabilitation program's bid; and
- 870 (B) recommend to the advisory board that a procurement unit award a contract to
871 a community rehabilitation program;
- 872 (v) collect and report program data to the advisory board and ~~[to]~~ the division; and
- 873 (vi) ~~[other duties specified by the advisory board]~~ perform other duties that the
874 advisory board specifies.
- 875 (7) Except as provided under Subsection (9), notwithstanding any provision of this chapter
876 to the contrary, ~~[each]~~ a procurement unit shall purchase [goods and services produced
877 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)]~~

(4)(b)(iii) if:

(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;

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

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

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

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

(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.

(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.

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

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

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

An award of a procurement contract under this chapter:

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

(2) does not create a contract.

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

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

~~[(1) A contract, including an amendment to an existing contract, entered into under this chapter may not require that a design professional indemnify another from liability 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 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.