

1 **Division of Purchasing and General Services Amendments**

 2025 GENERAL SESSION

 STATE OF UTAH

Chief Sponsor:

2
3 **LONG TITLE**

4 **General Description:**

5 This bill modifies the Utah Procurement Code.

6 **Highlighted Provisions:**

7 This bill:

8 ▶ defines a term;

9 ▶ eliminates the option of the Purchasing from Persons with Disabilities Advisory Board
10 (PPDAB) to form a central not-for-profit association to assist the PPDAB with its functions,
11 and authorizes the PPDAB to contract with a person to assist the PPDAB with its functions;

12 ▶ codifies that awarding a contract to a vendor is not the creation of a contract with the
13 vendor;

14 ▶ prohibits including certain contractual terms in a procurement contract, unless the
15 assistant attorney general grants a specific exemption; and

16 ▶ makes technical and conforming corrections.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **63G-6a-103**, as last amended by Laws of Utah 2024, Chapters 291, 408 and 438

24 **63G-6a-109**, as last amended by Laws of Utah 2022, Chapter 421

25 **63G-6a-303**, as last amended by Laws of Utah 2023, Chapter 43

26 **63G-6a-506**, as last amended by Laws of Utah 2021, Chapter 344

27 **63G-6a-805**, as last amended by Laws of Utah 2016, Chapter 271

28 **63G-6a-1203**, as last amended by Laws of Utah 2015, Chapter 218

29 ENACTS:

30 **63G-6a-1201.5**, Utah Code Annotated 1953

31

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

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

34 **63G-6a-103 . Definitions.**

35 As used in this chapter:

- 36 (1) "Approved vendor" means a person who has been approved for inclusion on an
37 approved vendor list through the approved vendor list process.
- 38 (2) "Approved vendor list" means a list of approved vendors established under Section
39 63G-6a-507.
- 40 (3) "Approved vendor list process" means the procurement process described in Section
41 63G-6a-507.
- 42 (4)(a) "Award" means, in relation to a contract, a procurement unit's selection of a
43 vendor to supply a procurement item after the procurement unit engages in:
44 (i) a standard procurement process; or
45 (ii) an exception to a standard procurement process under Part 8, Exceptions to
46 Procurement Requirements.
- 47 (b) "Award" does not mean, in relation to a contract, a procurement unit's offer or
48 acceptance of any terms or conditions related to the procurement unit's acquisition or
49 receipt of the procurement item.
- 50 [~~4~~] (5) "Bidder" means a person who submits a bid or price quote in response to an
51 invitation for bids.
- 52 [~~5~~] (6) "Bidding process" means the procurement process described in Part 6, Bidding.
- 53 [~~6~~] (7) "Board" means the Utah State Procurement Policy Board, created in Section
54 63G-6a-202.
- 55 [~~7~~] (8) "Change directive" means a written order signed by the procurement officer that
56 directs the contractor to suspend work or make changes, as authorized by contract,
57 without the consent of the contractor.
- 58 [~~8~~] (9) "Change order" means a written alteration in specifications, delivery point, rate of
59 delivery, period of performance, price, quantity, or other provisions of a contract, upon
60 mutual agreement of the parties to the contract.
- 61 [~~9~~] (10) "Chief procurement officer" means the individual appointed under Section
62 63A-2-102.
- 63 [~~10~~] (11) "Conducting procurement unit" means a procurement unit that conducts all
64 aspects of a procurement:
65 (a) except:

- 66 (i) reviewing a solicitation to verify that it is in proper form; and
67 (ii) causing the publication of a notice of a solicitation; and
68 (b) including:
69 (i) preparing any solicitation document;
70 (ii) appointing an evaluation committee;
71 (iii) conducting the evaluation process, except the process relating to scores
72 calculated for costs of proposals;
73 (iv) selecting and recommending the person to be awarded a contract;
74 (v) negotiating the terms and conditions of a contract, subject to the issuing
75 procurement unit's approval; and
76 (vi) contract administration.
- 77 [(H)] (12) "Conservation district" means the same as that term is defined in Section
78 17D-3-102.
- 79 [(12)] (13) "Construction project":
80 (a) means a project for the construction, renovation, alteration, improvement, or repair of
81 a public facility on real property, including all services, labor, supplies, and materials
82 for the project; and
83 (b) does not include services and supplies for the routine, day-to-day operation, repair,
84 or maintenance of an existing public facility.
- 85 [(13)] (14) "Construction manager/general contractor":
86 (a) means a contractor who enters into a contract:
87 (i) for the management of a construction project; and
88 (ii) that allows the contractor to subcontract for additional labor and materials that are
89 not included in the contractor's cost proposal submitted at the time of the
90 procurement of the contractor's services; and
91 (b) does not include a contractor whose only subcontract work not included in the
92 contractor's cost proposal submitted as part of the procurement of the contractor's
93 services is to meet subcontracted portions of change orders approved within the
94 scope of the project.
- 95 [(14)] (15) "Construction subcontractor":
96 (a) means a person under contract with a contractor or another subcontractor to provide
97 services or labor for the design or construction of a construction project;
98 (b) includes a general contractor or specialty contractor licensed or exempt from
99 licensing under Title 58, Chapter 55, Utah Construction Trades Licensing Act; and

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

102 ~~[(15)]~~ (16) "Contract" means an agreement for a procurement.

103 ~~[(16)]~~ (17) "Contract administration" means all functions, duties, and responsibilities
104 associated with managing, overseeing, and carrying out a contract between a
105 procurement unit and a contractor, including:

106 (a) implementing the contract;

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

109 (c) executing change orders;

110 (d) processing contract amendments;

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

112 (f) curing contract errors and deficiencies;

113 (g) terminating a contract;

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

115 (i) computing payments under the contract; and

116 (j) closing out a contract.

117 ~~[(17)]~~ (18) "Contractor" means a person who is awarded a contract with a procurement unit.

118 ~~[(18)]~~ (19) "Cooperative procurement" means procurement conducted by, or on behalf of:

119 (a) more than one procurement unit; or

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

121 ~~[(19)]~~ (20) "Cooperative purchasing organization" means an organization, association, or
122 alliance of purchasers established to combine purchasing power in order to obtain the
123 best value for the purchasers by engaging in procurements in accordance with Section
124 63G-6a-2105.

125 ~~[(20)]~~ (21) "Cost-plus-a-percentage-of-cost contract" means a contract under which the
126 contractor is paid a percentage of the total actual expenses or costs in addition to the
127 contractor's actual expenses or costs.

128 ~~[(21)]~~ (22) "Cost-reimbursement contract" means a contract under which a contractor is
129 reimbursed for costs which are allowed and allocated in accordance with the contract
130 terms and the provisions of this chapter, and a fee, if any.

131 ~~[(22)]~~ (23) "Days" means calendar days, unless expressly provided otherwise.

132 ~~[(23)]~~ (24) "Definite quantity contract" means a fixed price contract that provides for a
133 specified amount of supplies over a specified period, with deliveries scheduled

134 according to a specified schedule.

135 [~~(24)~~] (25) "Design professional" means:

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

146 [~~(25)~~] (26) "Design professional procurement process" means the procurement process
147 described in Part 15, Design Professional Services.

148 [~~(26)~~] (27) "Design professional services" means:

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

157 [~~(27)~~] (28) "Design-build" means the procurement of design professional services and
158 construction by the use of a single contract.

159 [~~(28)~~] (29) "Division" means the Division of Purchasing and General Services, created in
160 Section 63A-2-101.

161 [~~(29)~~] (30) "Educational procurement unit" means:

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

168 ~~[(30)]~~ (31) "Established catalogue price" means the price included in a catalogue, price list,
169 schedule, or other form that:

- 170 (a) is regularly maintained by a manufacturer or contractor;
171 (b) is published or otherwise available for inspection by customers; and
172 (c) states prices at which sales are currently or were last made to a significant number of
173 any category of buyers or buyers constituting the general buying public for the
174 supplies or services involved.

175 ~~[(31)]~~ (32)(a) "Executive branch procurement unit" means a department, division, office,
176 bureau, agency, or other organization within the state executive branch.

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

179 ~~[(32)]~~ (33) "Facilities division" means the Division of Facilities Construction and
180 Management, created in Section 63A-5b-301.

181 ~~[(33)]~~ (34) "Fixed price contract" means a contract that provides a price, for each
182 procurement item obtained under the contract, that is not subject to adjustment except to
183 the extent that:

- 184 (a) the contract provides, under circumstances specified in the contract, for an
185 adjustment in price that is not based on cost to the contractor; or
186 (b) an adjustment is required by law.

187 ~~[(34)]~~ (35) "Fixed price contract with price adjustment" means a fixed price contract that
188 provides for an upward or downward revision of price, precisely described in the
189 contract, that:

- 190 (a) is based on the consumer price index or another commercially acceptable index,
191 source, or formula; and
192 (b) is not based on a percentage of the cost to the contractor.

193 ~~[(35)]~~ (36) "Grant" means an expenditure of public funds or other assistance, or an
194 agreement to expend public funds or other assistance, for a public purpose authorized by
195 law, without acquiring a procurement item in exchange.

196 ~~[(36)]~~ (37) "Human services procurement item" means a procurement item used to provide
197 services or support to a child, youth, adult, or family.

198 ~~[(37)]~~ (38) "Immaterial error":

- 199 (a) means an irregularity or abnormality that is:
200 (i) a matter of form that does not affect substance; or
201 (ii) an inconsequential variation from a requirement of a solicitation that has no, little,

202 or a trivial effect on the procurement process and that is not prejudicial to other
203 vendors; and

204 (b) includes:

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

207 (ii) a typographical error;

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

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

211 [(38)] (39) "Indefinite quantity contract" means a fixed price contract that:

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

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

215 (ii) provides a maximum purchase limit.

216 [(39)] (40) "Independent procurement unit" means:

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

218 (ii) a judicial branch procurement unit;

219 (iii) an educational procurement unit;

220 (iv) a local government procurement unit;

221 (v) a conservation district;

222 (vi) a local building authority;

223 (vii) a special district;

224 (viii) a public corporation;

225 (ix) a special service district; or

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

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

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

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

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

235 (f) any other executive branch department, division, office, or entity that has statutory

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

- 270 Legislature;
- 271 (B) the membership of which includes legislators; and
- 272 (C) for which the Office of Legislative Research and General Counsel provides
- 273 staff support.
- 274 ~~[(46)]~~ (47) "Local building authority" means the same as that term is defined in Section
- 275 17D-2-102.
- 276 ~~[(47)]~~ (48) "Local government procurement unit" means:
- 277 (a) a county, municipality, interlocal entity, or project entity, and each office of the
- 278 county, municipality, interlocal entity, or project entity, unless:
- 279 (i) the county or municipality adopts a procurement code by ordinance;
- 280 (ii) the interlocal entity adopts procurement rules or policies as provided in
- 281 Subsection 11-13-226(2); or
- 282 (iii) the project entity adopts a procurement code through the process described in
- 283 Section 11-13-316;
- 284 (b)(i) a county or municipality that has adopted this entire chapter by ordinance, and
- 285 each office or agency of that county or municipality; and
- 286 (ii) a project entity that has adopted this entire chapter through the process described
- 287 in Subsection 11-13-316; or
- 288 (c) a county, municipality, or project entity, and each office of the county, municipality,
- 289 or project entity that has adopted a portion of this chapter to the extent that:
- 290 (i) a term in the ordinance is used in the adopted chapter; or
- 291 (ii) a term in the ordinance is used in the language a project entity adopts in its
- 292 procurement code through the process described in Section 11-13-316.
- 293 ~~[(48)]~~ (49) "Multiple award contracts" means the award of a contract for an indefinite
- 294 quantity of a procurement item to more than one person.
- 295 ~~[(49)]~~ (50) "Multiyear contract" means a contract that extends beyond a one-year period,
- 296 including a contract that permits renewal of the contract, without competition, beyond
- 297 the first year of the contract.
- 298 ~~[(50)]~~ (51) "Municipality" means a city or town.
- 299 ~~[(51)]~~ (52) "Nonadopting local government procurement unit" means:
- 300 (a) a county or municipality that has not adopted Part 16, Protests, Part 17, Procurement
- 301 Appeals Board, Part 18, Appeals to Court and Court Proceedings, and Part 19,
- 302 General Provisions Related to Protest or Appeal; and
- 303 (b) each office or agency of a county or municipality described in Subsection ~~[(51)]~~(a)

- 304 (52)(a).
- 305 [~~(52)~~] (53) "Offeror" means a person who submits a proposal in response to a request for
306 proposals.
- 307 [~~(53)~~] (54) "Preferred bidder" means a bidder that is entitled to receive a reciprocal
308 preference under the requirements of this chapter.
- 309 [~~(54)~~] (55) "Procure" means to acquire a procurement item through a procurement.
- 310 [~~(55)~~] (56) "Procurement" means the acquisition of a procurement item through an
311 expenditure of public funds, or an agreement to expend public funds, including an
312 acquisition through a public-private partnership.
- 313 [~~(56)~~] (57) "Procurement item" means an item of personal property, a technology, a service,
314 or a construction project.
- 315 [~~(57)~~] (58) "Procurement official" means:
- 316 (a) for a procurement unit other than an independent procurement unit, the chief
317 procurement officer;
- 318 (b) for a legislative procurement unit, the individual, individuals, or body designated in a
319 policy adopted by the Legislative Management Committee;
- 320 (c) for a judicial procurement unit, the Judicial Council or an individual or body
321 designated by the Judicial Council by rule;
- 322 (d) for a local government procurement unit:
- 323 (i) the legislative body of the local government procurement unit; or
324 (ii) an individual or body designated by the local government procurement unit;
- 325 (e) for a special district, the board of trustees of the special district or the board of
326 trustees' designee;
- 327 (f) for a special service district, the governing body of the special service district or the
328 governing body's designee;
- 329 (g) for a local building authority, the board of directors of the local building authority or
330 the board of directors' designee;
- 331 (h) for a conservation district, the board of supervisors of the conservation district or the
332 board of supervisors' designee;
- 333 (i) for a public corporation, the board of directors of the public corporation or the board
334 of directors' designee;
- 335 (j) for a school district or any school or entity within a school district, the board of the
336 school district or the board's designee;
- 337 (k) for a charter school, the individual or body with executive authority over the charter

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

372 [~~(58)~~] (59) "Procurement unit" means:

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

384 [~~(59)~~] (60) "Professional service" means labor, effort, or work that requires specialized
385 knowledge, expertise, and discretion, including labor, effort, or work in the field of:

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

397 [~~(60)~~] (61) "Project entity" means the same as that term is defined in Section 11-13-103.

398 [~~(61)~~] (62) "Protest officer" means:

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

406 of the division .

407 ~~[(62)]~~ (63) "Public corporation" means the same as that term is defined in Section 63E-1-102.

408 ~~[(63)]~~ (64) "Public entity" means the state or any other government entity within the state

409 that expends public funds.

410 ~~[(64)]~~ (65) "Public facility" means a building, structure, infrastructure, improvement, or

411 other facility of a public entity.

412 ~~[(65)]~~ (66) "Public funds" means money, regardless of its source, including from the federal

413 government, that is owned or held by a procurement unit.

414 ~~[(66)]~~ (67) "Public transit district" means a public transit district organized under Title 17B,

415 Chapter 2a, Part 8, Public Transit District Act.

416 ~~[(67)]~~ (68) "Public-private partnership" means an arrangement or agreement, occurring on

417 or after January 1, 2017, between a procurement unit and one or more contractors to

418 provide for a public need through the development or operation of a project in which the

419 contractor or contractors share with the procurement unit the responsibility or risk of

420 developing, owning, maintaining, financing, or operating the project.

421 ~~[(68)]~~ (69) "Qualified vendor" means a vendor who:

422 (a) is responsible; and

423 (b) submits a responsive statement of qualifications under Section 63G-6a-410 that

424 meets the minimum mandatory requirements, evaluation criteria, and any applicable

425 score thresholds set forth in the request for statement of qualifications.

426 ~~[(69)]~~ (70) "Real property" means land and any building, fixture, improvement,

427 appurtenance, structure, or other development that is permanently affixed to land.

428 ~~[(70)]~~ (71) "Request for information" means a nonbinding process through which a

429 procurement unit requests information relating to a procurement item.

430 ~~[(71)]~~ (72) "Request for proposals" means a document used to solicit proposals to provide a

431 procurement item to a procurement unit, including all other documents that are attached

432 to that document or incorporated in that document by reference.

433 ~~[(72)]~~ (73) "Request for proposals process" means the procurement process described in Part

434 7, Request for Proposals.

435 ~~[(73)]~~ (74) "Request for statement of qualifications" means a document used to solicit

436 information about the qualifications of a person interested in responding to a potential

437 procurement, including all other documents attached to that document or incorporated in

438 that document by reference.

439 ~~[(74)]~~ (75) "Requirements contract" means a contract:

- 440 (a) under which a contractor agrees to provide a procurement unit's entire requirements
441 for certain procurement items at prices specified in the contract during the contract
442 period; and
- 443 (b) that:
- 444 (i) does not require a minimum purchase amount; or
445 (ii) provides a maximum purchase limit.
- 446 ~~[(75)]~~ (76) "Responsible" means being capable, in all respects, of:
- 447 (a) meeting all the requirements of a solicitation; and
448 (b) fully performing all the requirements of the contract resulting from the solicitation,
449 including being financially solvent with sufficient financial resources to perform the
450 contract.
- 451 ~~[(76)]~~ (77) "Responsive" means conforming in all material respects to the requirements of a
452 solicitation.
- 453 ~~[(77)]~~ (78) "Rule" includes a policy or regulation adopted by the rulemaking authority, if
454 adopting a policy or regulation is the method the rulemaking authority uses to adopt
455 provisions that govern the applicable procurement unit.
- 456 ~~[(78)]~~ (79) "Rulemaking authority" means:
- 457 (a) for a legislative procurement unit, the Legislative Management Committee;
458 (b) for a judicial procurement unit, the Judicial Council;
459 (c)(i) only to the extent of the procurement authority expressly granted to the
460 procurement unit by statute:
- 461 (A) for the facilities division, the facilities division;
462 (B) for the Office of the Attorney General, the attorney general;
463 (C) for the Department of Transportation created in Section 72-1-201, the
464 executive director of the Department of Transportation;
465 (D) for the Department of Health and Human Services, the executive director of
466 the Department of Health and Human Services; and
467 (E) for any other executive branch department, division, office, or entity that has
468 statutory procurement authority outside this chapter, the governing authority of
469 the department, division, office, or entity; and
- 470 (ii) for each other executive branch procurement unit, the board;
- 471 (d) for a local government procurement unit:
- 472 (i) the governing body of the local government unit; or
473 (ii) an individual or body designated by the local government procurement unit;

- 474 (e) for a school district or a public school, the board, except to the extent of a school
 475 district's own nonadministrative rules that do not conflict with the provisions of this
 476 chapter;
- 477 (f) for a state institution of higher education, the Utah Board of Higher Education;
- 478 (g) for the State Board of Education or the Utah Schools for the Deaf and the Blind, the
 479 State Board of Education;
- 480 (h) for a public transit district, the chief executive of the public transit district;
- 481 (i) for a special district other than a public transit district or for a special service district,
 482 the board, except to the extent that the board of trustees of the special district or the
 483 governing body of the special service district makes its own rules:
- 484 (i) with respect to a subject addressed by board rules; or
 485 (ii) that are in addition to board rules;
- 486 (j) for the Utah Educational Savings Plan, created in Section 53B-8a-103, the Utah
 487 Board of Higher Education;
- 488 (k) for the School and Institutional Trust Lands Administration, created in Section
 489 53C-1-201, the School and Institutional Trust Lands Board of Trustees;
- 490 (l) for the School and Institutional Trust Fund Office, created in Section 53D-1-201, the
 491 School and Institutional Trust Fund Board of Trustees;
- 492 (m) for the Utah Communications Authority, established in Section 63H-7a-201, the
 493 Utah Communications Authority board, created in Section 63H-7a-203; or
- 494 (n) for any other procurement unit, the board.
- 495 ~~[(79)]~~ (80) "Service":
- 496 (a) means labor, effort, or work to produce a result that is beneficial to a procurement
 497 unit;
- 498 (b) includes a professional service; and
- 499 (c) does not include labor, effort, or work provided under an employment agreement or a
 500 collective bargaining agreement.
- 501 ~~[(80)]~~ (81) "Small purchase process" means the procurement process described in Section
 502 63G-6a-506.
- 503 ~~[(81)]~~ (82) "Sole source contract" means a contract resulting from a sole source procurement.
- 504 ~~[(82)]~~ (83) "Sole source procurement" means a procurement without competition pursuant to
 505 a determination under Subsection 63G-6a-802(1)(a) that there is only one source for the
 506 procurement item.
- 507 ~~[(83)]~~ (84) "Solicitation" means an invitation for bids, request for proposals, or request for

- 508 statement of qualifications.
- 509 [(84)] (85) "Solicitation response" means:
- 510 (a) a bid submitted in response to an invitation for bids;
- 511 (b) a proposal submitted in response to a request for proposals; or
- 512 (c) a statement of qualifications submitted in response to a request for statement of
- 513 qualifications.
- 514 [(85)] (86) "Special district" means the same as that term is defined in Section 17B-1-102.
- 515 [(86)] (87) "Special service district" means the same as that term is defined in Section
- 516 17D-1-102.
- 517 [(87)] (88) "Specification" means any description of the physical or functional
- 518 characteristics or of the nature of a procurement item included in an invitation for bids
- 519 or a request for proposals, or otherwise specified or agreed to by a procurement unit,
- 520 including a description of:
- 521 (a) a requirement for inspecting or testing a procurement item; or
- 522 (b) preparing a procurement item for delivery.
- 523 [(88)] (89) "Standard procurement process" means:
- 524 (a) the bidding process;
- 525 (b) the request for proposals process;
- 526 (c) the approved vendor list process;
- 527 (d) the small purchase process; or
- 528 (e) the design professional procurement process.
- 529 [(89)] (90) "State cooperative contract" means a contract awarded by the division for and in
- 530 behalf of all public entities.
- 531 [(90)] (91) "Statement of qualifications" means a written statement submitted to a
- 532 procurement unit in response to a request for statement of qualifications.
- 533 [(91)] (92) "Subcontractor":
- 534 (a) means a person under contract to perform part of a contractual obligation under the
- 535 control of the contractor, whether the person's contract is with the contractor directly
- 536 or with another person who is under contract to perform part of a contractual
- 537 obligation under the control of the contractor; and
- 538 (b) includes a supplier, distributor, or other vendor that furnishes supplies or services to
- 539 a contractor.
- 540 [(92)] (93) "Technology" means the same as "information technology," as defined in Section
- 541 63A-16-102.

- 542 [~~(93)~~] (94) "Tie bid" means that the lowest responsive bids of responsible bidders are
543 identical in price.
- 544 [~~(94)~~] (95) "Time and materials contract" means a contract under which the contractor is
545 paid:
- 546 (a) the actual cost of direct labor at specified hourly rates;
 - 547 (b) the actual cost of materials and equipment usage; and
 - 548 (c) an additional amount, expressly described in the contract, to cover overhead and
549 profit, that is not based on a percentage of the cost to the contractor.
- 550 [~~(95)~~] (96) "Transitional costs":
- 551 (a) means the costs of changing:
 - 552 (i) from an existing provider of a procurement item to another provider of that
553 procurement item; or
 - 554 (ii) from an existing type of procurement item to another type;
 - 555 (b) includes:
 - 556 (i) training costs;
 - 557 (ii) conversion costs;
 - 558 (iii) compatibility costs;
 - 559 (iv) costs associated with system downtime;
 - 560 (v) disruption of service costs;
 - 561 (vi) staff time necessary to implement the change;
 - 562 (vii) installation costs; and
 - 563 (viii) ancillary software, hardware, equipment, or construction costs; and
 - 564 (c) does not include:
 - 565 (i) the costs of preparing for or engaging in a procurement process; or
 - 566 (ii) contract negotiation or drafting costs.
- 567 [~~(96)~~] (97) "Vendor":
- 568 (a) means a person who is seeking to enter into a contract with a procurement unit to
569 provide a procurement item; and
 - 570 (b) includes:
 - 571 (i) a bidder;
 - 572 (ii) an offeror;
 - 573 (iii) an approved vendor;
 - 574 (iv) a design professional; and
 - 575 (v) a person who submits an unsolicited proposal under Section 63G-6a-712.

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

577 **63G-6a-109 . Issuing procurement unit and conducting procurement unit.**

578 (1) With respect to a procurement by an executive branch procurement unit, except for a
579 procurement by an executive branch procurement unit that, under Subsection [
580 ~~63G-6a-103(38)(b), (e), (d), or (e)] 63G-6a-103(40)(b), (c), (d), or (e), is designated as an
581 independent procurement unit:~~

582 (a) the division is the issuing procurement unit; and

583 (b) the executive branch procurement unit is the conducting procurement unit and is
584 responsible to ensure that the procurement is conducted in compliance with this
585 chapter.

586 (2) With respect to a procurement by any other procurement unit, the procurement unit is
587 both the issuing procurement unit and the conducting procurement unit.

588 (3) A conducting procurement unit is responsible for contract administration.

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

590 **63G-6a-303 . Role, duties, and authority of chief procurement officer.**

591 (1) The chief procurement officer:

592 (a) is the director of the division;

593 (b) serves as the central procurement officer of the state;

594 (c) serves as a voting member of the board; and

595 (d) serves as the protest officer for a protest relating to a procurement of an executive
596 branch procurement, except an executive branch procurement unit designated under
597 Subsection [~~63G-6a-103(38)(b), (e), (d), or (e)] 63G-6a-103(40)(b), (c), (d), or (e) as
598 an independent procurement unit, or a state cooperative contract procurement, unless
599 the chief procurement officer designates another to serve as protest officer, as
600 authorized in this chapter.~~

601 (2) Except as otherwise provided in this chapter, the chief procurement officer shall:

602 (a) develop procurement policies and procedures supporting ethical procurement
603 practices, fair and open competition among vendors, and transparency within the
604 state's procurement process;

605 (b) administer the state's cooperative purchasing program, including state cooperative
606 contracts and associated administrative fees;

607 (c) enter into an agreement with a public entity for services provided by the division, if
608 the agreement is in the best interest of the state;

609 (d) ensure the division's compliance with any applicable law, rule, or policy, including a

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

- 644 attorney general's office; and
- 645 (b) may:
- 646 (i) delegate limited purchasing authority to a state agency, with appropriate oversight
- 647 and control to ensure compliance with this chapter;
- 648 (ii) delegate duties and authority to an employee of the division, as the chief
- 649 procurement officer considers appropriate;
- 650 (iii) negotiate and settle contract overcharges, undercharges, and claims, in
- 651 accordance with the law and after consultation with the attorney general's office;
- 652 (iv) authorize a procurement unit to make a procurement pursuant to a regional
- 653 solicitation, as defined in Subsection 63G-6a-2105(7), even if the procurement
- 654 item is also offered under a state cooperative contract, if the chief procurement
- 655 officer determines that the procurement pursuant to a regional solicitation is in the
- 656 best interest of the acquiring procurement unit; and
- 657 (v) remove an individual from the procurement process or contract administration for:
- 658 (A) having a conflict of interest or the appearance of a conflict of interest with a
- 659 person responding to a solicitation or with a contractor;
- 660 (B) having a bias or the appearance of bias for or against a person responding to a
- 661 solicitation or for or against a contractor;
- 662 (C) making an inconsistent or unexplainable score for a solicitation response;
- 663 (D) having inappropriate contact or communication with a person responding to a
- 664 solicitation;
- 665 (E) socializing inappropriately with a person responding to a solicitation or with a
- 666 contractor;
- 667 (F) engaging in any other action or having any other association that causes the
- 668 chief procurement officer to conclude that the individual cannot fairly evaluate
- 669 a solicitation response or administer a contract; or
- 670 (G) any other violation of a law, rule, or policy.
- 671 (4) The chief procurement officer may not delegate to an individual outside the division the
- 672 chief procurement officer's authority over a procurement described in Subsection
- 673 (3)(a)(iv).
- 674 (5) The chief procurement officer has final authority to determine whether an executive
- 675 branch procurement unit's anticipated expenditure of public funds, anticipated agreement
- 676 to expend public funds, or provision of a benefit constitutes a procurement that is subject
- 677 to this chapter.

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

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

686 **63G-6a-506 . Small purchases.**

687 (1) As used in this section:

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

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

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

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

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

702 (i) establishing expenditure thresholds, including:

703 (A) an annual cumulative threshold;

704 (B) an individual procurement item threshold; and

705 (C) a single procurement aggregate threshold;

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

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

709 (c) If a procurement unit obtains administrative law judge service through a small
710 purchase standard procurement process, rules made under Subsection (2)(a) shall
711 provide that the process for the procurement of administrative law judge service

- 712 include an evaluation committee described in Subsection 63G-6a-116(3).
- 713 (3) Expenditures made under this section by a procurement unit may not exceed a threshold
714 established by the rulemaking authority, unless the procurement official gives written
715 authorization to exceed the threshold that includes the reasons for exceeding the
716 threshold.
- 717 (4) Except as provided in Subsection (5), an executive branch procurement unit may not
718 obtain a procurement item through a small purchase standard procurement process if the
719 procurement item may be obtained through a state cooperative contract or a contract
720 awarded by the chief procurement officer under Subsection 63G-6a-2105(1).
- 721 (5) Subsection (4) does not apply if:
- 722 (a) the procurement item is obtained for an unanticipated, urgent, or emergency
723 condition, including:
- 724 (i) an item needed to avoid stopping a public construction project;
725 (ii) an immediate repair to a facility or equipment; or
726 (iii) another emergency condition; or
- 727 (b) the chief procurement officer or the procurement official of a procurement unit that
728 is an executive branch procurement unit with independent procurement authority:
- 729 (i) determines in writing that it is in the best interest of the procurement unit to obtain
730 an individual procurement item outside of the state contract, comparing:
- 731 (A) the contract terms and conditions applicable to the procurement item under the
732 state contract with the contract terms and conditions applicable to the
733 procurement item if the procurement item is obtained outside of the state
734 contract;
- 735 (B) the maintenance and service applicable to the procurement item under the
736 state contract with the maintenance and service applicable to the procurement
737 item if the procurement item is obtained outside of the state contract;
- 738 (C) the warranties applicable to the procurement item under the state contract with
739 the warranties applicable to the procurement item if the procurement item is
740 obtained outside of the state contract;
- 741 (D) the quality of the procurement item under the state contract with the quality of
742 the procurement item if the procurement item is obtained outside of the state
743 contract; and
- 744 (E) the ability of the vendor under the state contract to match the quoted cost of
745 the procurement item if the procurement item is obtained outside of the state

- 746 contract;
- 747 (ii) for a procurement item that, if defective in its manufacture, installation, or
748 performance, may result in serious physical injury, death, or substantial property
749 damage, determines in writing that the terms and conditions, relating to liability
750 for injury, death, or property damage, available from the source other than the
751 contractor who holds the state contract, are similar to, or better than, the terms and
752 conditions available under the state contract; and
- 753 (iii) grants an exception, in writing, to the requirement described in Subsection (4).
- 754 (6) Except as otherwise expressly provided in this section, a procurement unit:
- 755 (a) may not use the small purchase standard procurement process described in this
756 section for ongoing, continuous, and regularly scheduled procurements that exceed
757 the annual cumulative threshold; and
- 758 (b) shall make its ongoing, continuous, and regularly scheduled procurements that
759 exceed the annual cumulative threshold through a contract awarded through another
760 standard procurement process described in this chapter or an applicable exception to
761 another standard procurement process, described in Part 8, Exceptions to
762 Procurement Requirements.
- 763 (7) This section does not prohibit regularly scheduled payments for a procurement item
764 obtained under another provision of this chapter.
- 765 (8)(a) It is unlawful for a person knowingly to divide a single procurement into multiple
766 smaller procurements, including by dividing an invoice or purchase order into
767 multiple invoices or purchase orders, if:
- 768 (i) the single procurement would not have qualified as a small purchase under this
769 section;
- 770 (ii) one or more of the multiple smaller procurements qualify as a small purchase
771 under this section; and
- 772 (iii) the division is done with the intent to:
- 773 (A) avoid having to use a standard procurement process, other than the small
774 purchase process, that the person would otherwise be required to use for the
775 single procurement; or
- 776 (B) make one or more of the multiple smaller procurements fall below a small
777 purchase expenditure threshold established by rule under Subsection (2)(b) that
778 the single procurement would not have fallen below without the division.
- 779 (b) A violation of Subsection (8)(a) is subject to penalties as provided in Subsection

780 63G-6a-2404.3(2).

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

784 (10) An executive branch procurement unit may not make a small purchase after January 1,
785 2014, unless the chief procurement officer certifies that the person responsible for
786 procurements in the procurement unit has satisfactorily completed training on this
787 section and the rules made under this section.

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

789 **63G-6a-805 . Purchase from community rehabilitation programs.**

790 (1) As used in this section:

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

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

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

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

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

803 (ii) A community rehabilitation program:

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

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

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

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

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

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

- 814 ~~[(d)]~~ (c) "Person with a disability" means a person with ~~[any]~~ a disability as defined by
815 and covered under the Americans with Disabilities Act of 1990, 42 U.S.C. 12102.
- 816 (2) There is created within the division the Purchasing from Persons with Disabilities
817 Advisory Board.
- 818 (3) The advisory board shall consist of three members, as follows:
- 819 (a) the director of the division or the director's designee;
- 820 (b) the director of the Utah State Office of Rehabilitation or the director's designee; and
- 821 (c) a representative of the private business community who shall be appointed to a
822 three-year term by the governor with the advice and consent of the Senate.
- 823 (4)~~(a)~~ The advisory board shall meet, as needed, to facilitate ~~[the procurement of goods~~
824 ~~and services from community rehabilitation programs by a procurement unit under~~
825 ~~this chapter by:]~~ a procurement unit's procurement of a good or service under this
826 chapter from a community rehabilitation program.
- 827 (b) The advisory board shall:
- 828 ~~[(a)]~~ (i) ~~[identifying goods and services that are available from community~~
829 ~~rehabilitation programs]~~ identify the good or service that is available from a
830 community rehabilitation program in accordance with the requirements of
831 Subsection (7);
- 832 ~~[(b)]~~ (ii) ~~[approving prices]~~ approve a price in accordance with Subsection (7)(c) for [
833 ~~goods and services that are identified under Subsection (4)(a)]~~ the good or service
834 that the advisory board identifies under Subsection (4)(b)(i);
- 835 ~~[(c)]~~ (iii) ~~[developing, maintaining, and approving a preferred procurement contract~~
836 ~~list of goods and services identified and priced under Subsections (4)(a) and (b)]~~
837 develop, maintain, and approve a preferred procurement contract list of the goods
838 and services that the advisory board identifies and prices under Subsections
839 (4)(b)(i) and (ii);
- 840 ~~[(d)]~~ (iv) ~~[reviewing bids received by a community rehabilitation program]~~ review a
841 community rehabilitation program's bid; and
- 842 ~~[(e)]~~ (v) ~~[awarding and renewing]~~ award and renew specified contracts for set contract
843 times, without competitive bidding, for ~~[the]~~ a procurement unit's purchase of [
844 ~~goods and services]~~ a good or service under Subsection (7).
- 845 (5) The provisions of Subsections (4) and (7)(a) are an exception to the procurement
846 provisions under this chapter.
- 847 (6)(a) The advisory board may ~~[designate a central not-for-profit association, appoint its~~

848 ~~members, and establish guidelines for its duties]~~ enter into an agreement with a person
 849 to provide administrative support to the advisory board.

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

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

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

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

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

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

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

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

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

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

873 (7) Except as provided under Subsection (9), notwithstanding any provision of this chapter
 874 to the contrary, ~~[each]~~ a procurement unit shall purchase [goods and services produced
 875 by a community rehabilitation program] a community rehabilitation program's good or
 876 service using the preferred procurement contract list approved under Subsection [(4)(e)]
 877 (4)(b)(iii) if:

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

881 (b) the community rehabilitation program can supply the good or service within a

- 882 reasonable time; and
- 883 (c) the price of the good or service is reasonably competitive with the cost of procuring
- 884 the good or service from another source.
- 885 (8) ~~[Each]~~ A community rehabilitation program:
- 886 (a) may submit a bid to the advisory board at any time and not necessarily in response to
- 887 an invitation for bids; and
- 888 (b) shall certify on ~~[any bid it]~~ the bid that the community rehabilitation program submits
- 889 to the advisory board or to a procurement unit under this section that ~~[it]~~ the
- 890 community rehabilitation program is claiming a preference under this section.
- 891 (9) During a fiscal year, the requirement for a procurement unit to purchase ~~[goods and~~
- 892 ~~services produced by a community rehabilitation program]~~ a good or service that a
- 893 community rehabilitation program produces under the preferred procurement list under
- 894 Subsection (7) does not apply if the division determines that the total amount of
- 895 procurement contracts with community rehabilitation programs has reached \$5 million
- 896 for that fiscal year.
- 897 (10) In the case of conflict between a purchase under this section and a purchase under
- 898 Section 63G-6a-804, this section prevails.

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

900 **63G-6a-1201.5 . Award of contract -- Effect.**

901 An award of a contract under this chapter:

- 902 -
- 903 (1) is not an offer or an acceptance of a bid, proposal, estimate, quote, or an offer; and
- 904 (2) does not create a contract.

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

906 **63G-6a-1203 . Provisions not to be included in a contract -- Exemption.**

- 907 (1) Except as provided under Subsection (2), a procurement unit may not enter into a
- 908 contract under this chapter if a provision of the contract:
- 909 (a) requires the procurement unit to defend, indemnify, or hold harmless the vendor or
- 910 another person;
- 911 (b) grants the vendor the unilateral authority to modify a term of the contract;
- 912 (c) in the event of a dispute, litigation, or another adversarial proceeding, requires the
- 913 procurement unit to be represented by legal counsel other than:
- 914 (i) the attorney general;
- 915 (ii) other legal counsel the procurement unit chooses; or

916 (iii) if the vendor is obligated to the state under an indemnification provision of the
 917 contract, other legal counsel the vendor chooses, subject to the written consent of
 918 the procurement unit;

919 (d) requires the terms of the contract to be governed by, or construed in accordance, with
 920 the laws of a state other than this state;

921 (e) requires a claim or dispute arising under the contract to be resolved or settled by
 922 binding arbitration;

923 (f) is inconsistent with Chapter 2, Government Records Access and Management Act; or

924 (g) ~~[A contract, including an amendment to an existing contract, entered into under this~~
 925 ~~chapter may not require that a design professional]~~ requires a design professional to
 926 indemnify another [from liability claims that arise] person from a liability claim
 927 arising out of the design professional's services, unless the liability claim arises from:

928 (i) the design professional's negligent act, wrongful act, error[~~or omission~~], or
 929 omission; or

930 (ii) ~~[other]~~ another liability imposed by law.

931 (2)(a) The assistant attorney general may exempt a contract from a prohibition under
 932 Subsection (1)(a) through (g), as the relative positions of the contracting parties,
 933 market conditions, or other circumstances justify.

934 (b) The assistant attorney general shall memorialize in writing to the contracting
 935 procurement unit:

936 (i) any exemption granted under Subsection (2)(a); and

937 (ii) the basis for any exemption granted.

938 ~~[(2)]~~ (3) ~~[Subsection (1) may not be waived by contract]~~ Subject to Subsection (4), a
 939 procurement unit may not enter into a contract with a vendor that waives a prohibition
 940 described in Subsection (1).

941 ~~[(3)]~~ (4) ~~Notwithstanding [Subsections (1) and (2)]~~ Subsection (1)(g) or (3), a [design
 942 professional may be required] procurement unit may require a design professional to
 943 indemnify a person for whom the design professional has direct or indirect control or
 944 responsibility.

945 Section 8. **Effective date.**

946 This bill takes effect on May 7, 2025.