

1 **UTAH COMMUNICATIONS AUTHORITY - PROCUREMENT**

2 2018 SECOND SPECIAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Stephen G. Handy**

5 Senate Sponsor: David G. Buxton

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions related to procurement and the Utah Communications
10 Authority.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ incorporates the Utah Communications Authority into the Utah Procurement Code
14 with independent procurement authority; and
15 ▶ makes technical changes.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 This bill provides a special effective date.

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **63G-6a-103**, as last amended by Laws of Utah 2018, Chapter 352 and last amended by
23 Coordination Clause, Laws of Utah 2018, Chapter 315

24 **63G-6a-106**, as last amended by Laws of Utah 2016, Chapter 355

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

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



28 **63G-6a-103. Definitions.**

29 As used in this chapter:

30 (1) "Applicable rulemaking authority" means:

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

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

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

35 (A) for the building board or the Division of Facilities Construction and Management,
36 created in Section 63A-5-201, the building board;

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

38 (C) for the Department of Transportation created in Section 72-1-201, the executive
39 director of the Department of Transportation; and

40 (ii) for each other executive branch procurement unit, the board;

41 (d) for a local government procurement unit:

42 (i) the legislative body of the local government procurement unit; or

43 (ii) an individual or body designated by the legislative body of the local government
44 procurement unit;

45 (e) for a school district or a public school, the board, except to the extent of a school
46 district's own nonadministrative rules that do not conflict with the provisions of this chapter;

47 (f) for a state institution of higher education described in:

48 (i) Subsections 53B-1-102(1)(a) and (c), the State Board of Regents; or

49 (ii) Subsection 53B-1-102(1)(b), the Utah System of Technical Colleges Board of
50 Trustees;

51 (g) for the State Board of Education, the State Board of Education;

52 (h) for a public transit district, the chief executive of the public transit district;

53 (i) for a local district other than a public transit district or for a special service district:

54 (i) before January 1, 2015, the board of trustees of the local district or the governing
55 body of the special service district; or

56 (ii) on or after January 1, 2015, the board, except to the extent that the board of trustees
57 of the local district or the governing body of the special service district makes its own rules:

58 (A) with respect to a subject addressed by board rules; or

- 59 (B) that are in addition to board rules; [~~or~~]
60 (j) for the Utah Communications Authority, established in Section [63H-7a-201](#), the
61 Utah Communications Authority Board, created in Section [63H-7a-203](#); or
62 [~~(j)~~] (k) for any other procurement unit, the board.
- 63 (2) "Approved vendor" means a person who has been approved for inclusion on an
64 approved vendor list through the approved vendor list process.
- 65 (3) "Approved vendor list" means a list of approved vendors established under Section
66 [63G-6a-507](#).
- 67 (4) "Approved vendor list process" means the procurement process described in
68 Section [63G-6a-507](#).
- 69 (5) "Bidder" means a person who submits a bid or price quote in response to an
70 invitation for bids.
- 71 (6) "Bidding process" means the procurement process described in Part 6, Bidding.
- 72 (7) "Board" means the Utah State Procurement Policy Board, created in Section
73 [63G-6a-202](#).
- 74 (8) "Building board" means the State Building Board, created in Section [63A-5-101](#).
- 75 (9) "Change directive" means a written order signed by the procurement officer that
76 directs the contractor to suspend work or make changes, as authorized by contract, without the
77 consent of the contractor.
- 78 (10) "Change order" means a written alteration in specifications, delivery point, rate of
79 delivery, period of performance, price, quantity, or other provisions of a contract, upon mutual
80 agreement of the parties to the contract.
- 81 (11) "Chief procurement officer" means the chief procurement officer appointed under
82 Subsection [63G-6a-302\(1\)](#).
- 83 (12) "Conducting procurement unit" means a procurement unit that conducts all
84 aspects of a procurement:
- 85 (a) except:
- 86 (i) reviewing a solicitation to verify that it is in proper form; and
87 (ii) causing the publication of a notice of a solicitation; and
- 88 (b) including:
- 89 (i) preparing any solicitation document;

- 90 (ii) appointing an evaluation committee;
- 91 (iii) conducting the evaluation process, except as provided in Subsection
- 92 [63G-6a-707](#)(6)(b) relating to scores calculated for costs of proposals;
- 93 (iv) selecting and recommending the person to be awarded a contract;
- 94 (v) negotiating the terms and conditions of a contract, subject to the issuing
- 95 procurement unit's approval; and
- 96 (vi) contract administration.
- 97 (13) "Conservation district" means the same as that term is defined in Section
- 98 [17D-3-102](#).
- 99 (14) "Construction":
- 100 (a) means services, including work, and supplies for a project for the construction,
- 101 renovation, alteration, improvement, or repair of a public facility on real property; and
- 102 (b) does not include services and supplies for the routine, day-to-day operation, repair,
- 103 or maintenance of an existing public facility.
- 104 (15) "Construction manager/general contractor":
- 105 (a) means a contractor who enters into a contract:
- 106 (i) for the management of a construction project; and
- 107 (ii) that allows the contractor to subcontract for additional labor and materials that are
- 108 not included in the contractor's cost proposal submitted at the time of the procurement of the
- 109 contractor's services; and
- 110 (b) does not include a contractor whose only subcontract work not included in the
- 111 contractor's cost proposal submitted as part of the procurement of the contractor's services is to
- 112 meet subcontracted portions of change orders approved within the scope of the project.
- 113 (16) "Construction subcontractor":
- 114 (a) means a person under contract with a contractor or another subcontractor to provide
- 115 services or labor for the design or construction of a construction project;
- 116 (b) includes a general contractor or specialty contractor licensed or exempt from
- 117 licensing under Title 58, Chapter 55, Utah Construction Trades Licensing Act; and
- 118 (c) does not include a supplier who provides only materials, equipment, or supplies to a
- 119 contractor or subcontractor for a construction project.
- 120 (17) "Contract" means an agreement for a procurement.

121 (18) "Contract administration" means all functions, duties, and responsibilities
122 associated with managing, overseeing, and carrying out a contract between a procurement unit
123 and a contractor, including:

- 124 (a) implementing the contract;
- 125 (b) ensuring compliance with the contract terms and conditions by the conducting
126 procurement unit and the contractor;
- 127 (c) executing change orders;
- 128 (d) processing contract amendments;
- 129 (e) resolving, to the extent practicable, contract disputes;
- 130 (f) curing contract errors and deficiencies;
- 131 (g) terminating a contract;
- 132 (h) measuring or evaluating completed work and contractor performance;
- 133 (i) computing payments under the contract; and
- 134 (j) closing out a contract.

135 (19) "Contractor" means a person who is awarded a contract with a procurement unit.

136 (20) "Cooperative procurement" means procurement conducted by, or on behalf of:

- 137 (a) more than one procurement unit; or
- 138 (b) a procurement unit and a cooperative purchasing organization.

139 (21) "Cooperative purchasing organization" means an organization, association, or
140 alliance of purchasers established to combine purchasing power in order to obtain the best
141 value for the purchasers by engaging in procurements in accordance with Section [63G-6a-2105](#).

142 (22) "Cost-plus-a-percentage-of-cost contract" means a contract under which the
143 contractor is paid a percentage of the total actual expenses or costs in addition to the
144 contractor's actual expenses or costs.

145 (23) "Cost-reimbursement contract" means a contract under which a contractor is
146 reimbursed for costs which are allowed and allocated in accordance with the contract terms and
147 the provisions of this chapter, and a fee, if any.

148 (24) "Days" means calendar days, unless expressly provided otherwise.

149 (25) "Definite quantity contract" means a fixed price contract that provides for a
150 specified amount of supplies over a specified period, with deliveries scheduled according to a
151 specified schedule.

- 152 (26) "Design professional" means:
- 153 (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects
- 154 Licensing Act; or
- 155 (b) an individual licensed as a professional engineer or professional land surveyor
- 156 under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing
- 157 Act.
- 158 (27) "Design professional procurement process" means the procurement process
- 159 described in Part 15, Design Professional Services.
- 160 (28) "Design-build" means the procurement of design professional services and
- 161 construction by the use of a single contract.
- 162 (29) "Design professional services" means:
- 163 (a) professional services within the scope of the practice of architecture as defined in
- 164 Section [58-3a-102](#);
- 165 (b) professional engineering as defined in Section [58-22-102](#); or
- 166 (c) master planning and programming services.
- 167 (30) "Director" means the director of the division.
- 168 (31) "Division" means the Division of Purchasing and General Services, created in
- 169 Section [63A-2-101](#).
- 170 (32) "Educational procurement unit" means:
- 171 (a) a school district;
- 172 (b) a public school, including a local school board or a charter school;
- 173 (c) the Utah Schools for the Deaf and Blind;
- 174 (d) the Utah Education and Telehealth Network;
- 175 (e) an institution of higher education of the state described in Section [53B-1-102](#); or
- 176 (f) the State Board of Education.
- 177 (33) "Established catalogue price" means the price included in a catalogue, price list,
- 178 schedule, or other form that:
- 179 (a) is regularly maintained by a manufacturer or contractor;
- 180 (b) is published or otherwise available for inspection by customers; and
- 181 (c) states prices at which sales are currently or were last made to a significant number
- 182 of any category of buyers or buyers constituting the general buying public for the supplies or

183 services involved.

184 (34) "Executive branch procurement unit" means a department, division, office,
185 bureau, agency, or other organization within the state executive branch.

186 (35) "Fixed price contract" means a contract that provides a price, for each
187 procurement item obtained under the contract, that is not subject to adjustment except to the
188 extent that:

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

191 (b) an adjustment is required by law.

192 (36) "Fixed price contract with price adjustment" means a fixed price contract that
193 provides for an upward or downward revision of price, precisely described in the contract, that:

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

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

197 (37) "Grant" means an expenditure of public funds or other assistance, or an agreement
198 to expend public funds or other assistance, for a public purpose authorized by law, without
199 acquiring a procurement item in exchange.

200 (38) "Head of a procurement unit" means:

201 (a) for a legislative procurement unit, any person designated by rule made by the
202 applicable rulemaking authority;

203 (b) for an executive branch procurement unit:

204 (i) the director of the division; or

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

206 (c) for a judicial procurement unit:

207 (i) the Judicial Council; or

208 (ii) any other person designated by the Judicial Council, by rule;

209 (d) for a local government procurement unit:

210 (i) the legislative body of the local government procurement unit; or

211 (ii) any other person designated by the local government procurement unit;

212 (e) for a local district other than a public transit district, the board of trustees of the
213 local district or a designee of the board of trustees;

214 (f) for a special service district, the governing body of the special service district or a
215 designee of the governing body;

216 (g) for a local building authority, the board of directors of the local building authority
217 or a designee of the board of directors;

218 (h) for a conservation district, the board of supervisors of the conservation district or a
219 designee of the board of supervisors;

220 (i) for a public corporation, the board of directors of the public corporation or a
221 designee of the board of directors;

222 (j) for a school district or any school or entity within a school district, the board of the
223 school district, or the board's designee;

224 (k) for a charter school, the individual or body with executive authority over the charter
225 school, or the individual's or body's designee;

226 (l) for an institution of higher education described in Section [53B-2-101](#), the president
227 of the institution of higher education, or the president's designee;

228 (m) for a public transit district, the board of trustees or a designee of the board of
229 trustees; [~~or~~]

230 (n) for the State Board of Education, the State Board of Education or a designee of the
231 State Board of Education[~~;~~]; or

232 (o) for the Utah Communications Authority, established in Section [63H-7a-201](#), the
233 executive director of the Utah Communications Authority or a designee of the executive
234 director.

235 (39) "Immaterial error":

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

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

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

240 (b) includes:

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

243 (ii) a typographical error;

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

245 (iv) any other error that the chief procurement officer or the head of a procurement unit
246 with independent procurement authority reasonably considers to be immaterial.

247 (40) "Indefinite quantity contract" means a fixed price contract that:

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

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

251 (ii) provides a maximum purchase limit.

252 (41) "Independent procurement authority" means authority granted to a procurement
253 unit under Subsection [63G-6a-106\(4\)\(a\)](#).

254 (42) "Invitation for bids":

255 (a) means a document used to solicit:

256 (i) bids to provide a procurement item to a procurement unit; or

257 (ii) quotes for a price of a procurement item to be provided to a procurement unit; and

258 (b) includes all documents attached to or incorporated by reference in a document
259 described in Subsection (42)(a).

260 (43) "Issuing procurement unit" means a procurement unit that:

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

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

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

264 (44) "Judicial procurement unit" means:

265 (a) the Utah Supreme Court;

266 (b) the Utah Court of Appeals;

267 (c) the Judicial Council;

268 (d) a state judicial district; or

269 (e) an office, committee, subcommittee, or other organization within the state judicial
270 branch.

271 (45) "Labor hour contract" is a contract under which:

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

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

275 (46) "Legislative procurement unit" means:

- 276 (a) the Legislature;
- 277 (b) the Senate;
- 278 (c) the House of Representatives;
- 279 (d) a staff office of the Legislature, the Senate, or the House of Representatives; or
- 280 (e) a committee, subcommittee, commission, or other organization:
- 281 (i) within the state legislative branch; or
- 282 (ii) (A) that is created by statute to advise or make recommendations to the Legislature;
- 283 (B) the membership of which includes legislators; and
- 284 (C) for which the Office of Legislative Research and General Counsel provides staff
- 285 support.
- 286 (47) "Local building authority" means the same as that term is defined in Section
- 287 [17D-2-102](#).
- 288 (48) "Local district" means the same as that term is defined in Section [17B-1-102](#).
- 289 (49) "Local government procurement unit" means:
- 290 (a) a county or municipality, and each office or agency of the county or municipality,
- 291 unless the county or municipality adopts its own procurement code by ordinance;
- 292 (b) a county or municipality that has adopted this entire chapter by ordinance, and each
- 293 office or agency of that county or municipality; or
- 294 (c) a county or municipality that has adopted a portion of this chapter by ordinance, to
- 295 the extent that a term in the ordinance is used in the adopted portion of this chapter, and each
- 296 office or agency of that county or municipality.
- 297 (50) "Multiple award contracts" means the award of a contract for an indefinite
- 298 quantity of a procurement item to more than one person.
- 299 (51) "Multiyear contract" means a contract that extends beyond a one-year period,
- 300 including a contract that permits renewal of the contract, without competition, beyond the first
- 301 year of the contract.
- 302 (52) "Municipality" means a city, town, or metro township.
- 303 (53) "Nonadopting local government procurement unit" means:
- 304 (a) a county or municipality that has not adopted Part 16, Protests, Part 17,
- 305 Procurement Appeals Board, Part 18, Appeals to Court and Court Proceedings, and Part 19,
- 306 General Provisions Related to Protest or Appeal; and

307 (b) each office or agency of a county or municipality described in Subsection (53)(a).

308 (54) "Offeror" means a person who submits a proposal in response to a request for
309 proposals.

310 (55) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference
311 under the requirements of this chapter.

312 (56) "Procure" means to acquire a procurement item through a procurement.

313 (57) "Procurement":

314 (a) means a procurement unit's acquisition of a procurement item through an
315 expenditure of public funds, or an agreement to expend public funds, including an acquisition
316 through a public-private partnership;

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

319 (i) preparing and issuing a solicitation; and

320 (ii) (A) conducting a standard procurement process; or

321 (B) conducting a procurement process that is an exception to a standard procurement
322 process under Part 8, Exceptions to Procurement Requirements; and

323 (c) does not include a grant.

324 (58) "Procurement item" means a supply, a service, or construction.

325 (59) "Procurement officer" means:

326 (a) for a procurement unit with independent procurement authority:

327 (i) the head of the procurement unit;

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

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

330 (b) for the division or a procurement unit without independent procurement authority,
331 the chief procurement officer.

332 (60) "Procurement unit":

333 (a) means:

334 (i) a legislative procurement unit;

335 (ii) an executive branch procurement unit;

336 (iii) a judicial procurement unit;

337 (iv) an educational procurement unit;

338 (v) the Utah Communications Authority, established in Section [63H-7a-201](#);
339 [~~(v)~~] (vi) a local government procurement unit;
340 [~~(vi)~~] (vii) a local district;
341 [~~(vii)~~] (viii) a special service district;
342 [~~(viii)~~] (ix) a local building authority;
343 [~~(ix)~~] (x) a conservation district;
344 [~~(x)~~] (xi) a public corporation; or
345 [~~(xi)~~] (xii) a public transit district; and
346 (b) does not include a political subdivision created under Title 11, Chapter 13,
347 Interlocal Cooperation Act.
348 (61) "Professional service" means labor, effort, or work that requires an elevated
349 degree of specialized knowledge and discretion, including labor, effort, or work in the field of:
350 (a) accounting;
351 (b) administrative law judge service;
352 (c) architecture;
353 (d) construction design and management;
354 (e) engineering;
355 (f) financial services;
356 (g) information technology;
357 (h) the law;
358 (i) medicine;
359 (j) psychiatry; or
360 (k) underwriting.
361 (62) "Protest officer" means:
362 (a) for the division or a procurement unit with independent procurement authority:
363 (i) the head of the procurement unit;
364 (ii) the head of the procurement unit's designee who is an employee of the procurement
365 unit; or
366 (iii) a person designated by rule made by the applicable rulemaking authority; or
367 (b) for a procurement unit without independent procurement authority, the chief
368 procurement officer or the chief procurement officer's designee who is an employee of the

369 division.

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

371 (64) "Public entity" means any government entity of the state or political subdivision of
372 the state, including:

373 (a) a procurement unit;

374 (b) a municipality or county, regardless of whether the municipality or county has
375 adopted this chapter or any part of this chapter; and

376 (c) any other government entity located in the state that expends public funds.

377 (65) "Public facility" means a building, structure, infrastructure, improvement, or other
378 facility of a public entity.

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

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

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

388 (69) "Qualified vendor" means a vendor who:

389 (a) is responsible; and

390 (b) submits a responsive statement of qualifications under Section [63G-6a-410](#) that
391 meets the minimum mandatory requirements, evaluation criteria, and any applicable score
392 thresholds set forth in the request for statement of qualifications.

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

395 (71) "Request for information" means a nonbinding process through which a
396 procurement unit requests information relating to a procurement item.

397 (72) "Request for proposals" means a document used to solicit proposals to provide a
398 procurement item to a procurement unit, including all other documents that are attached to that
399 document or incorporated in that document by reference.

400 (73) "Request for proposals process" means the procurement process described in Part
401 7, Request for Proposals.

402 (74) "Request for statement of qualifications" means a document used to solicit
403 information about the qualifications of a person interested in responding to a potential
404 procurement, including all other documents attached to that document or incorporated in that
405 document by reference.

406 (75) "Requirements contract" means a contract:

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

409 (b) that:

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

411 (ii) provides a maximum purchase limit.

412 (76) "Responsible" means being capable, in all respects, of:

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

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

416 (77) "Responsive" means conforming in all material respects to the requirements of a
417 solicitation.

418 (78) "Sealed" means manually or electronically secured to prevent disclosure.

419 (79) "Service":

420 (a) means labor, effort, or work to produce a result that is beneficial to a procurement
421 unit;

422 (b) includes a professional service; and

423 (c) does not include labor, effort, or work provided under an employment agreement or
424 a collective bargaining agreement.

425 (80) "Small purchase process" means the procurement process described in Section
426 [63G-6a-506](#).

427 (81) "Sole source contract" means a contract resulting from a sole source procurement.

428 (82) "Sole source procurement" means a procurement without competition pursuant to
429 a determination under Subsection [63G-6a-802\(1\)\(a\)](#) that there is only one source for the
430 procurement item.

431 (83) "Solicitation" means an invitation for bids, request for proposals, request for
432 statement of qualifications, or request for information.

433 (84) "Solicitation response" means:

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

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

436 (c) a statement of qualifications submitted in response to a request for statement of
437 qualifications.

438 (85) "Special service district" means the same as that term is defined in Section
439 [17D-1-102](#).

440 (86) "Specification" means any description of the physical or functional characteristics
441 or of the nature of a procurement item included in an invitation for bids or a request for
442 proposals, or otherwise specified or agreed to by a procurement unit, including a description of:

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

444 (b) preparing a procurement item for delivery.

445 (87) "Standard procurement process" means:

446 (a) the bidding process;

447 (b) the request for proposals process;

448 (c) the approved vendor list process;

449 (d) the small purchase process; or

450 (e) the design professional procurement process.

451 (88) "State cooperative contract" means a contract awarded by the division for and in
452 behalf of all public entities.

453 (89) "Statement of qualifications" means a written statement submitted to a
454 procurement unit in response to a request for statement of qualifications.

455 (90) "Subcontractor":

456 (a) means a person under contract to perform part of a contractual obligation under the
457 control of the contractor, whether the person's contract is with the contractor directly or with
458 another person who is under contract to perform part of a contractual obligation under the
459 control of the contractor; and

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

462 (91) "Supply" means a good, material, technology, piece of equipment, or any other
463 item of personal property.

464 (92) "Tie bid" means that the lowest responsive bids of responsible bidders are
465 identical in price.

466 (93) "Time and materials contract" means a contract under which the contractor is paid:

467 (a) the actual cost of direct labor at specified hourly rates;

468 (b) the actual cost of materials and equipment usage; and

469 (c) an additional amount, expressly described in the contract, to cover overhead and

470 profit, that is not based on a percentage of the cost to the contractor.

471 (94) "Transitional costs":

472 (a) means the costs of changing:

473 (i) from an existing provider of a procurement item to another provider of that

474 procurement item; or

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

476 (b) includes:

477 (i) training costs;

478 (ii) conversion costs;

479 (iii) compatibility costs;

480 (iv) costs associated with system downtime;

481 (v) disruption of service costs;

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

483 (vii) installation costs; and

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

485 (c) does not include:

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

487 (ii) contract negotiation or drafting costs.

488 (95) "Trial use contract" means a contract for a procurement item that the procurement

489 unit acquires for a trial use or testing to determine whether the procurement item will benefit

490 the procurement unit.

491 (96) "Vendor":

492 (a) means a person who is seeking to enter into a contract with a procurement unit to

493 provide a procurement item; and

494 (b) includes:

495 (i) a bidder;

496 (ii) an offeror;

497 (iii) an approved vendor;

498 (iv) a design professional; and

499 (v) a person who submits an unsolicited proposal under Section [63G-6a-712](#).

500 Section 2. Section **63G-6a-106** is amended to read:

501 **63G-6a-106. Procurement units with specific statutory procurement authority --**

502 **Independent procurement authority -- Authority of head of a procurement unit with**

503 **independent procurement authority.**

504 (1) A procurement unit with procurement authority under the following provisions has
505 independent procurement authority to the extent of the applicable provisions and for the
506 procurement items specified in the applicable provisions:

507 (a) Title 53B, State System of Higher Education;

508 (b) Title 63A, Chapter 5, State Building Board - Division of Facilities Construction
509 and Management;

510 (c) Title 67, Chapter 5, Attorney General;

511 (d) Title 72, Transportation Code; and

512 (e) Title 78A, Chapter 5, District Court.

513 (2) Except as otherwise provided in Sections [63G-6a-105](#) and [63G-6a-107](#), a
514 procurement unit shall conduct a procurement in accordance with this chapter.

515 (3) (a) The Department of Transportation may make rules governing the procurement
516 of highway construction or improvement.

517 (b) The applicable rulemaking authority for a public transit district may make rules
518 governing the procurement of a transit construction project or a transit improvement project.

519 (4) (a) A procurement unit listed in Subsection (4)(b) may, without the supervision,
520 interference, oversight, control, or involvement of the division or the chief procurement officer,
521 but in accordance with the requirements of this chapter:

522 (i) engage in a standard procurement process;

523 (ii) procure an item under an exception, as provided in this chapter, to the requirement

524 to use a standard procurement process; or

525 (iii) otherwise engage in an act authorized or required by this chapter.

526 (b) The procurement units to which Subsection (4)(a) applies are:

527 (i) a legislative procurement unit;

528 (ii) a judicial procurement unit;

529 (iii) an educational procurement unit;

530 (iv) a local government procurement unit;

531 (v) a conservation district;

532 (vi) a local building authority;

533 (vii) a local district;

534 (viii) a public corporation;

535 (ix) a special service district;

536 (x) a public transit district; ~~[and]~~

537 (xi) the Utah Communications Authority, established in Section [63H-7a-201](#); and

538 ~~[(xi)]~~ (xii) a procurement unit referred to in Subsection (1), to the extent authorized in
539 Subsection (1).

540 (c) A procurement unit with independent procurement authority shall comply with the
541 requirements of this chapter.

542 (d) Notwithstanding Subsection (4)(a), a procurement unit with independent
543 procurement authority may agree in writing with the division to extend the authority of the
544 division or the chief procurement officer to the procurement unit, as provided in the agreement.

545 (e) With respect to a procurement or contract over which the head of a procurement
546 unit with independent procurement authority has authority, the head of the procurement unit
547 with independent procurement authority may:

548 (i) manage and supervise the procurement to ensure to the extent practicable that
549 taxpayers receive the best value;

550 (ii) prepare and issue standard specifications for procurement items;

551 (iii) review contracts, coordinate contract compliance, conduct contract audits, and
552 approve change orders;

553 (iv) delegate duties and authority to an employee of the procurement unit, as the head
554 of the procurement unit with independent procurement authority considers appropriate;

555 (v) for the head of an executive branch procurement unit with independent
556 procurement authority, coordinate with the Department of Technology Services, created in
557 Section 63F-1-103, with respect to the procurement unit's procurement of information
558 technology services;

559 (vi) correct, amend, or cancel a procurement at any stage of the procurement process if
560 the procurement is out of compliance with this chapter or a rule adopted by the applicable
561 rulemaking authority;

562 (vii) after consultation with, as applicable, the attorney general's office or the
563 procurement unit's legal counsel, correct, amend, or cancel a contract at any time during the
564 term of the contract if:

565 (A) the contract is out of compliance with this chapter or a board rule; and

566 (B) the head of the procurement unit with independent procurement authority
567 determines that correcting, amending, or canceling the contract is in the best interest of the
568 procurement unit; and

569 (viii) attempt to resolve a contract dispute in coordination with the legal counsel of the
570 procurement unit with independent procurement authority.

571 (f) The head of a procurement unit with independent procurement authority serves as
572 the protest officer for a protest involving the procurement unit.

573 (g) If, at any time during the term of a contract awarded by a procurement unit with
574 independent procurement authority, the head of the procurement unit determines that the
575 contract is out of compliance with this chapter or applicable rules, the head of the procurement
576 unit may correct or amend the contract to bring it into compliance or cancel the contract:

577 (i) if the head of the procurement unit determines that correcting, amending, or
578 canceling the contract is in the best interest of the procurement unit; and

579 (ii) after consulting with legal counsel.

580 (5) (a) The attorney general may, in accordance with the provisions of this chapter, but
581 without involvement by the division or the chief procurement officer:

582 (i) retain outside counsel, subject to Section 67-5-33 if the attorney general retains
583 outside counsel under a contingent fee contract, as defined in that section; or

584 (ii) procure litigation support services, including retaining an expert witness.

585 (b) A procurement unit with independent procurement authority that is not represented

586 by the attorney general's office may, in accordance with the provisions of this chapter, but
587 without involvement by the division or the chief procurement officer:

588 (i) retain outside counsel; or

589 (ii) procure litigation support services, including retaining an expert witness.

590 (6) The state auditor's office may, in accordance with the provisions of this chapter, but
591 without involvement by the division or the chief procurement officer, procure audit services.

592 (7) The state treasurer may, in accordance with the provisions of this chapter, but
593 without involvement by the division or the chief procurement officer, procure:

594 (a) deposit services; and

595 (b) services related to issuing bonds.

596 **Section 3. Effective date.**

597 If approved by two-thirds of all the members elected to each house, this bill takes effect
598 upon approval by the governor, or the day following the constitutional time limit of Utah
599 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
600 the date of veto override.