

**CHANGES TO THE UTAH SCHOOLS FOR THE DEAF AND  
THE BLIND**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Susan Pulsipher**

Senate Sponsor: Ann Millner

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**LONG TITLE**

**General Description:**

This bill amends provisions related to the Utah Schools for the Deaf and the Blind.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ amends provisions regarding when the Utah Schools for the Deaf and the Blind is the local education agency of record for a student;
- ▶ amends reporting requirements;
- ▶ amends provisions related to eligibility for a student to receive services from the Utah Schools for the Deaf and the Blind;
- ▶ amends provisions related to school district and charter school cost-sharing with the Utah Schools for the Deaf and the Blind;
- ▶ amends provisions related to the applicability of the procurement code to the Utah Schools for the Deaf and the Blind, including provisions related to:
  - the applicable rulemaking authority for the Utah Schools for the Deaf and the Blind; and
  - requirements related to the purchase of goods and services from the Utah Correctional Industries Division; and
- ▶ makes technical and conforming changes.



28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **53E-8-102**, as renumbered and amended by Laws of Utah 2018, Chapter 1

35 **53E-8-201**, as renumbered and amended by Laws of Utah 2018, Chapter 1

36 **53E-8-204**, as renumbered and amended by Laws of Utah 2018, Chapter 1

37 **53E-8-401**, as renumbered and amended by Laws of Utah 2018, Chapter 1

38 **53E-8-403**, as renumbered and amended by Laws of Utah 2018, Chapter 1

39 **53E-8-406**, as renumbered and amended by Laws of Utah 2018, Chapter 1

40 **53E-8-407**, as renumbered and amended by Laws of Utah 2018, Chapter 1

41 **53E-8-409**, as renumbered and amended by Laws of Utah 2018, Chapter 1

42 **53E-8-410**, as renumbered and amended by Laws of Utah 2018, Chapter 1

43 **63G-6a-103**, as last amended by Laws of Utah 2018, Second Special Session, Chapter

44 4

45 **63G-6a-804**, as last amended by Laws of Utah 2013, Chapter 445



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

48 Section 1. Section **53E-8-102** is amended to read:

49 **53E-8-102. Definitions.**

50 As used in this chapter:

51 (1) "Advisory council" means the Advisory Council for the Utah Schools for the Deaf  
52 and the Blind.

53 (2) "Alternate format" includes braille, audio, [or] digital text, or large print.

54 (3) "Associate superintendent" means:

55 (a) the associate superintendent of the Utah School for the Deaf; or

56 (b) the associate superintendent of the Utah School for the Blind.

57 (4) "Blind" means:

58 (a) if the person is three years of age or older but younger than 22 years of age, having

59 a visual impairment that, even with correction, adversely affects educational performance or  
60 substantially limits one or more major life activities; and

61 (b) if the person is younger than three years of age, having a visual impairment.

62 (5) "Blindness" means an impairment in vision in which central visual acuity:

63 (a) does not exceed 20/200 in the better eye with correcting lenses; or

64 (b) is accompanied by a limit to the field of vision in the better eye to such a degree  
65 that its widest diameter subtends an angle of no greater than 20 degrees.

66 (6) "Board" means the State Board of Education.

67 (7) "Cortical visual impairment" means a [~~neurological visual disorder~~] cortical or  
68 cerebral visual impairment:

69 (a) that:

70 (i) affects the visual cortex or visual tracts of the brain;

71 (ii) is caused by damage to the visual pathways to the brain;

72 (iii) affects a person's visual discrimination, acuity, processing, and interpretation; and

73 (iv) is often present in conjunction with other disabilities or eye conditions that cause  
74 visual impairment; and

75 (b) in which the eyes and optic nerves of the affected person appear normal and the  
76 person's pupil responses are normal.

77 (8) "Deaf" means:

78 (a) if the person is three years of age or older but younger than 22 years of age, having  
79 hearing loss, whether permanent or fluctuating, that, even with amplification, adversely affects  
80 educational performance or substantially limits one or more major life activities; and

81 (b) if the person is younger than three years of age, having hearing loss.

82 (9) "Deafblind" means:

83 (a) if the person is three years of age or older but younger than 22 years of age:

84 (i) deaf;

85 (ii) blind; and

86 (iii) having hearing loss and visual impairments that cause such severe communication  
87 and other developmental and educational needs that the person cannot be accommodated in  
88 special education programs solely for students who are deaf or blind; or

89 (b) if the person is younger than three years of age, having both hearing loss and vision

90 impairments that are diagnosed as provided in Section [53E-8-401](#).

91 (10) "Deafness" means a hearing loss so severe that the person is impaired in  
92 processing linguistic information through hearing, with or without amplification.

93 [~~(11) "Educator" means a person who holds:~~]

94 [~~(a) (i) a license issued under Chapter 6, Education Professional Licensure; and]~~

95 [~~(ii) a position as:~~]

96 [~~(A) a teacher;~~]

97 [~~(B) a speech pathologist;~~]

98 [~~(C) a librarian or media specialist;~~]

99 [~~(D) a preschool teacher;~~]

100 [~~(E) a guidance counselor;~~]

101 [~~(F) a school psychologist;~~]

102 [~~(G) an audiologist; or]~~

103 [~~(H) an orientation and mobility specialist; or]~~

104 [~~(b) (i) a bachelor's degree or higher;~~]

105 [~~(ii) credentials from the governing body of the professional's area of practice; and]~~

106 [~~(iii) a position as:~~]

107 [~~(A) a Parent Infant Program consultant;~~]

108 [~~(B) a deafblind consultant;~~]

109 [~~(C) a school nurse;~~]

110 [~~(D) a physical therapist;~~]

111 [~~(E) an occupational therapist;~~]

112 [~~(F) a social worker; or]~~

113 [~~(G) a low vision specialist.]~~

114 (11) "Educator" means an individual who is:

115 (a) licensed by the state board under Section [53E-6-201](#); or

116 (b) credentialed by the governing body of the individual's area of professional practice.

117 (12) "Functional blindness" means a disorder in which the physical structures of the  
118 eye may be functioning, but the person does not attend to, examine, utilize, or accurately  
119 process visual information.

120 (13) "Functional hearing loss" means a central nervous system impairment that results

121 in abnormal auditory perception, including an auditory processing disorder or auditory  
122 neuropathy/dys-synchrony, in which parts of the auditory system may be functioning, but the  
123 person does not attend to, respond to, localize, utilize, or accurately process auditory  
124 information.

125 (14) "Hard of hearing" means having a hearing loss, excluding deafness.

126 (15) "Individualized education program" or "IEP" means:

127 (a) a written statement for a student with a disability that is developed, reviewed, and  
128 revised in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. Sec.

129 1400 et seq.; or

130 (b) an individualized family service plan developed:

131 (i) for a child with a disability who is younger than three years of age; and

132 (ii) in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. Sec.

133 1400 et seq.

134 (16) "LEA" means a local education agency that has administrative control and  
135 direction for public education.

136 (17) "LEA of record" means the school district of residence of a student as determined  
137 under Section [53G-6-302](#).

138 (18) "Low vision" means an impairment in vision in which:

139 (a) visual acuity is at 20/70 or worse; [or]

140 (b) the visual field is reduced to less than 20 degrees[.];

141 (c) even with correction, educational performance is affected; or

142 (d) at least one major life activity is substantially limited.

143 (19) "Parent Infant Program" means a program at the Utah Schools for the Deaf and the  
144 Blind that provides services:

145 (a) through an interagency agreement with the Department of Health to children  
146 younger than three years of age who are deaf, blind, or deafblind; and

147 (b) to children younger than three years of age who are deafblind through Deafblind  
148 Services of the Utah Schools for the Deaf and the Blind.

149 (20) "Section 504" means Section 504 of the Rehabilitation Act of 1973.

150 (21) "Section 504 accommodation plan" means a plan developed pursuant to Section  
151 504 of the Rehabilitation Act of 1973, as amended, to provide appropriate accommodations to

152 an individual with a disability to ensure access to major life activities.

153 (22) "Superintendent" means the superintendent of the Utah Schools for the Deaf and  
154 the Blind.

155 (23) "Visual impairment" includes partial sightedness, low vision, blindness, cortical  
156 visual impairment, functional blindness, and degenerative conditions that lead to blindness or  
157 severe loss of vision.

158 Section 2. Section **53E-8-201** is amended to read:

159 **53E-8-201. Utah Schools for the Deaf and the Blind created -- Designated LEA --**  
160 **Services statewide.**

161 (1) The Utah Schools for the Deaf and the Blind is created as a single public school  
162 agency that includes:

- 163 (a) the Utah School for the Deaf;
- 164 (b) the Utah School for the Blind;
- 165 (c) programs for students who are deafblind; and
- 166 (d) the Parent Infant Program.

167 (2) Under the general control and supervision of the board, consistent with the board's  
168 constitutional authority, the Utah Schools for the Deaf and the Blind:

- 169 (a) may provide services to students statewide:
  - 170 (i) who are deaf, blind, or deafblind; or
  - 171 (ii) who are neither deaf, blind, nor deafblind, if allowed under rules of the board
- 172 established pursuant to Section [53E-8-401](#); and
- 173 (b) shall serve as the designated LEA for a student and assume the responsibilities of  
174 providing services as prescribed through the student's IEP or Section 504 accommodation plan  
175 when the [~~student's LEA of record, parent or legal guardian, and the Utah Schools for the Deaf~~  
176 ~~and the Blind determine~~] team that develops the student's IEP or Section 504 accommodation  
177 plan determines that the student be placed at the Utah Schools for the Deaf and the Blind.

178 (3) When the Utah Schools for the Deaf and the Blind becomes a student's designated  
179 LEA, the LEA of record and the Utah Schools for the Deaf and the Blind shall ensure that all  
180 rights and requirements regarding individual student assessment, eligibility, services,  
181 placement, and procedural safeguards provided through the Individuals with Disabilities  
182 Education Act, 20 U.S.C. Sec. 1400 et seq. and Section 504 of the Rehabilitation Act of 1973,

183 as amended, remain in force.

184 (4) Nothing in this section diminishes the responsibility of a student's LEA of record  
185 for the education of the student as provided in Chapter 7, Part 2, Special Education Program.

186 Section 3. Section **53E-8-204** is amended to read:

187 **53E-8-204. Authority of the State Board of Education -- Rulemaking --**  
188 **Superintendent -- Advisory Council.**

189 (1) The State Board of Education is the governing board of the Utah Schools for the  
190 Deaf and the Blind.

191 (2) (a) The board shall appoint a superintendent for the Utah Schools for the Deaf and  
192 the Blind.

193 (b) The board shall make rules in accordance with Title 63G, Chapter 3, Utah  
194 Administrative Rulemaking Act, regarding the qualifications, terms of employment, and duties  
195 of the superintendent for the Utah Schools for the Deaf and the Blind.

196 (3) The superintendent shall:

197 (a) subject to the approval of the board, appoint an associate superintendent to  
198 administer the Utah School for the Deaf based on:

199 (i) demonstrated competency as an expert educator of deaf persons; and

200 (ii) knowledge of school management and the instruction of deaf persons;

201 (b) subject to the approval of the board, appoint an associate superintendent to  
202 administer the Utah School for the Blind based on:

203 (i) demonstrated competency as an expert educator of blind persons; and

204 (ii) knowledge of school management and the instruction of blind persons, including an  
205 understanding of the unique needs and education of deafblind persons.

206 (4) (a) The board shall:

207 (i) establish an Advisory Council for the Utah Schools for the Deaf and the Blind and  
208 appoint no more than 11 members to the advisory council;

209 (ii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative  
210 Rulemaking Act, regarding the operation of the advisory council; and

211 (iii) receive and consider the advice and recommendations of the advisory council but  
212 is not obligated to follow the recommendations of the advisory council.

213 (b) The advisory council described in Subsection (4)(a) shall include at least:

214 (i) two members who are blind;  
 215 (ii) two members who are deaf; and  
 216 (iii) two members who are deafblind or parents of a deafblind child.  
 217 (5) The board shall approve the annual budget and expenditures of the Utah Schools  
 218 for the Deaf and the Blind.

219 (6) (a) On or before the November interim meeting each year, the board shall report to  
 220 the Education Interim Committee on the Utah Schools for the Deaf and the Blind.

221 (b) The board shall ensure that the report described in Subsection (6)(a) includes:

- 222 (i) a financial report;
- 223 [~~(ii) a report on the activities of the superintendent and associate superintendents;~~]
- 224 [~~(iii) a report on activities to involve parents and constituency and advocacy groups in~~  
 225 ~~the governance of the school; and]~~
- 226 [~~(iv) a report on student achievement, including:~~
- 227 [~~(A) longitudinal student achievement data for both current and previous students~~  
 228 ~~served by the Utah Schools for the Deaf and the Blind;]~~
- 229 [~~(B) graduation rates; and]~~
- 230 [~~(C) a description of the educational placement of students exiting the Utah Schools for~~  
 231 ~~the Deaf and the Blind.]~~

- 232 (ii) a report on Utah Schools for the Deaf and the Blind programs and activities; and
- 233 (iii) a report of student academic performance.

234 Section 4. Section **53E-8-401** is amended to read:

235 **53E-8-401. Eligibility for services of the Utah Schools for the Deaf and the Blind.**

236 (1) Except as provided in Subsections (3), (4), and (5), ~~[a person]~~ an individual is  
 237 eligible to receive services of the Utah Schools for the Deaf and the Blind if the ~~[person]~~  
 238 individual is:

- 239 (a) a resident of Utah;
- 240 (b) younger than 22 years of age;
- 241 (c) referred to the Utah Schools for the Deaf and the Blind by ~~[the person's]~~;
- 242 (i) the individual's school district of residence [or];
- 243 (ii) a local early intervention program; [and] or
- 244 (iii) if the referral is consistent with the Individual with Disabilities Education Act, 20



245 U.S.C. Sec 1400 et seq., the Parent Infant Program; and

246 (d) identified as deaf, blind, or deafblind through:

247 (i) the special education eligibility determination process; or

248 (ii) the Section 504 eligibility determination process.

249 (2) (a) In [~~diagnosing a person~~] determining eligibility for an individual who is younger  
250 than age three [who] and is deafblind, the following information may be used:

251 (i) ophthalmological and audiological documentation;

252 (ii) functional vision or hearing assessments and evaluations; or

253 (iii) informed clinical opinion conducted by a person with expertise in deafness,  
254 blindness, or deafblindness.

255 (b) Informed clinical opinion shall be:

256 (i) included in the determination of eligibility when documentation is incomplete or not  
257 conclusive; and

258 (ii) based on pertinent records related to the individual's current health status and  
259 medical history, an evaluation and observations of the individual's level of sensory functioning,  
260 and the needs of the family.

261 (3) (a) A student who qualifies for special education shall have services and placement  
262 determinations made through the IEP process.

263 (b) A student who qualifies for accommodations under Section 504 shall have services  
264 and placement determinations made through the Section 504 team process.

265 [~~(c) A parent or legal guardian of a child who is deaf, blind, or deafblind shall make the~~  
266 ~~final decision regarding placement of the child in a Utah Schools for the Deaf and the Blind~~  
267 ~~program or in a school district or charter school program subject to special education federal~~  
268 ~~regulations regarding due process.]~~

269 (4) (a) A nonresident may receive services of the Utah Schools for the Deaf and the  
270 Blind in accordance with rules of the board.

271 (b) The rules shall require the payment of tuition for services provided to a  
272 nonresident.

273 (5) An individual is eligible to receive services from the Utah Schools for the Deaf and  
274 the Blind under circumstances described in Section [53E-8-408](#).

275 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and

276 this chapter, the board:

277 (a) shall make rules that determine the eligibility of students to be served by the Utah  
278 Schools for the Deaf and the Blind; and

279 (b) may make rules to allow a resident of Utah who is neither deaf, blind, nor deafblind  
280 to receive services of the Utah Schools for the Deaf and the Blind if the [~~student~~] resident is  
281 younger than 22 years of age.

282 Section 5. Section **53E-8-403** is amended to read:

283 **53E-8-403. Educational programs.**

284 (1) The Utah Schools for the Deaf and the Blind shall provide an educational program  
285 for a student:

286 (a) based on assessments of the student's abilities; and

287 (b) in accordance with the student's IEP or Section 504 accommodation plan.

288 (2) If a student's ability to access the core curriculum is impaired primarily due to a  
289 severe sensory loss and requires intensive sensory-based instruction or services, the Utah  
290 Schools for the Deaf and the Blind shall provide an educational program that will enable the  
291 student, with accommodations, to access the core curriculum.

292 (3) The Utah Schools for the Deaf and the Blind shall provide instruction in Braille to  
293 students who are blind as required by Chapter 7, Part 3, Braille Requirements for Blind  
294 Students.

295 Section 6. Section **53E-8-406** is amended to read:

296 **53E-8-406. Programs for deafblind individuals -- State deafblind education**  
297 **specialist.**

298 (1) The board shall adopt policies and programs for providing appropriate educational  
299 services to individuals who are deafblind.

300 (2) Except as provided in Subsection (4), the board shall designate an employee who  
301 holds a deafblind [~~certification~~] credential issued by the state board or equivalent training and  
302 expertise to:

303 (a) act as a resource coordinator for the board on public education programs designed  
304 for individuals who are deafblind;

305 (b) facilitate the design and implementation of professional development programs to  
306 assist school districts, charter schools, and the Utah Schools for the Deaf and the Blind in

307 meeting the educational needs of those who are deafblind; and

308 (c) facilitate the design of and assist with the implementation of one-on-one  
309 intervention programs in school districts, charter schools, and at the Utah Schools for the Deaf  
310 and the Blind for those who are deafblind, serving as a resource for, or team member of,  
311 individual IEP teams.

312 (3) The board may authorize and approve the costs of an employee to obtain a  
313 deafblind ~~[certification]~~ credential issued by the state board or equivalent training and expertise  
314 to qualify for the position described in Subsection (2).

315 (4) The board may contract with a third party for the services required under  
316 Subsection (2).

317 Section 7. Section **53E-8-407** is amended to read:

318 **53E-8-407. Educational Enrichment Program for Deaf, Hard of Hearing, Blind,**  
319 **and Visually Impaired Students -- Funding for the program.**

320 (1) There is established the Educational Enrichment Program for Deaf, Hard of  
321 Hearing, ~~[and]~~ Blind, and Visually Impaired Students.

322 (2) The purpose of the program is to provide opportunities that will, in a family  
323 friendly environment, enhance the educational services required for deaf, hard of hearing,  
324 blind, visually impaired, or deafblind students.

325 (3) The advisory council shall make recommendations to the state board regarding the  
326 design and [implement] implementation of the program~~[, subject to the approval by the board].~~

327 (4) The program shall be funded from the ~~[interest and dividends derived]~~ revenue  
328 distributed from the permanent funds created for the Utah Schools for the Deaf and the Blind  
329 pursuant to Section 12 of the Utah Enabling Act and distributed by the director of the School  
330 and Institutional Trust Lands Administration under Section **53C-3-103**.

331 Section 8. Section **53E-8-409** is amended to read:

332 **53E-8-409. Instructional Materials Access Center -- Board to make rules.**

333 (1) The board shall collaborate with the Utah Schools for the Deaf and the Blind,  
334 school districts, and charter schools in establishing the Utah State Instructional Materials  
335 Access Center to provide students with print disabilities access to instructional materials in  
336 alternate formats in a timely manner.

337 (2) The board shall make rules, in accordance with Title 63G, Chapter 3, Utah

338 Administrative Rulemaking Act, to:

339 (a) establish the Utah State Instructional Materials Access Center;

340 (b) define how ~~[the Educational Resource Center at]~~ the Utah Schools for the Deaf and  
341 the Blind shall collaborate in the operation of the Utah State Instructional Materials Access  
342 Center;

343 (c) specify procedures for the operation of the Utah State Instructional Materials  
344 Access Center, including procedures to:

345 (i) identify students who qualify for instructional materials in alternate formats; and

346 (ii) distribute and store instructional materials in alternate formats; and

347 ~~[(d) establish the contribution of school districts and charter schools towards the cost  
348 of instructional materials in alternate formats; and]~~

349 ~~[(e)]~~ (d) require textbook publishers, as a condition of contract, to provide electronic  
350 file sets in conformance with the National Instructional Materials Accessibility Standard.

351 Section 9. Section **53E-8-410** is amended to read:

352 **53E-8-410. School districts to provide class space for deaf and blind programs.**

353 ~~[(1)]~~ A school district with students who reside within the school district's boundaries  
354 and are served by the Utah Schools for the Deaf and the Blind shall[:] make a good faith effort  
355 to provide the Utah Schools for the Deaf and the Blind with space required for programs  
356 offered by the Utah Schools for the Deaf and the Blind.

357 ~~[(a) furnish the schools with space required for their programs; or]~~

358 ~~[(b) help pay for the cost of leasing classroom space in other school districts.]~~

359 ~~[(2) A school district's participation in the program under Subsection (1) is based upon  
360 the number of students who are served by the Schools for the Deaf and the Blind and who  
361 reside within the school district as compared to the state total of students who are served by the  
362 schools.]~~

363 Section 10. Section **63G-6a-103** is amended to read:

364 **63G-6a-103. Definitions.**

365 As used in this chapter:

366 (1) "Applicable rulemaking authority" means:

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

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

- 369 (c) (i) only to the extent of the procurement authority expressly granted to the  
370 procurement unit by statute:
- 371 (A) for the building board or the Division of Facilities Construction and Management,  
372 created in Section 63A-5-201, the building board;
- 373 (B) for the Office of the Attorney General, the attorney general; and
- 374 (C) for the Department of Transportation created in Section 72-1-201, the executive  
375 director of the Department of Transportation; and
- 376 (ii) for each other executive branch procurement unit, the board;
- 377 (d) for a local government procurement unit:
- 378 (i) the legislative body of the local government procurement unit; or
- 379 (ii) an individual or body designated by the legislative body of the local government  
380 procurement unit;
- 381 (e) for a school district or a public school, the board, except to the extent of a school  
382 district's own nonadministrative rules that do not conflict with the provisions of this chapter;
- 383 (f) for a state institution of higher education described in:
- 384 (i) Subsections 53B-1-102(1)(a) and (c), the State Board of Regents; or
- 385 (ii) Subsection 53B-1-102(1)(b), the Utah System of Technical Colleges Board of  
386 Trustees;
- 387 (g) for the State Board of Education[;] or the Utah Schools for the Deaf and the Blind,  
388 the State Board of Education;
- 389 (h) for a public transit district, the chief executive of the public transit district;
- 390 (i) for a local district other than a public transit district or for a special service district:
- 391 (i) before January 1, 2015, the board of trustees of the local district or the governing  
392 body of the special service district; or
- 393 (ii) on or after January 1, 2015, the board, except to the extent that the board of trustees  
394 of the local district or the governing body of the special service district makes its own rules:
- 395 (A) with respect to a subject addressed by board rules; or
- 396 (B) that are in addition to board rules;
- 397 (j) for the Utah Communications Authority, established in Section 63H-7a-201, the  
398 Utah Communications Authority Board, created in Section 63H-7a-203; or
- 399 (k) for any other procurement unit, the board.

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

402 (3) "Approved vendor list" means a list of approved vendors established under Section  
403 [63G-6a-507](#).

404 (4) "Approved vendor list process" means the procurement process described in  
405 Section [63G-6a-507](#).

406 (5) "Bidder" means a person who submits a bid or price quote in response to an  
407 invitation for bids.

408 (6) "Bidding process" means the procurement process described in Part 6, Bidding.

409 (7) "Board" means the Utah State Procurement Policy Board, created in Section  
410 [63G-6a-202](#).

411 (8) "Building board" means the State Building Board, created in Section [63A-5-101](#).

412 (9) "Change directive" means a written order signed by the procurement officer that  
413 directs the contractor to suspend work or make changes, as authorized by contract, without the  
414 consent of the contractor.

415 (10) "Change order" means a written alteration in specifications, delivery point, rate of  
416 delivery, period of performance, price, quantity, or other provisions of a contract, upon mutual  
417 agreement of the parties to the contract.

418 (11) "Chief procurement officer" means the chief procurement officer appointed under  
419 Subsection [63G-6a-302\(1\)](#).

420 (12) "Conducting procurement unit" means a procurement unit that conducts all  
421 aspects of a procurement:

422 (a) except:

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

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

425 (b) including:

426 (i) preparing any solicitation document;

427 (ii) appointing an evaluation committee;

428 (iii) conducting the evaluation process, except as provided in Subsection  
429 [63G-6a-707\(6\)\(b\)](#) relating to scores calculated for costs of proposals;

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

- 431 (v) negotiating the terms and conditions of a contract, subject to the issuing  
432 procurement unit's approval; and
- 433 (vi) contract administration.
- 434 (13) "Conservation district" means the same as that term is defined in Section  
435 [17D-3-102](#).
- 436 (14) "Construction":
- 437 (a) means services, including work, and supplies for a project for the construction,  
438 renovation, alteration, improvement, or repair of a public facility on real property; and
- 439 (b) does not include services and supplies for the routine, day-to-day operation, repair,  
440 or maintenance of an existing public facility.
- 441 (15) "Construction manager/general contractor":
- 442 (a) means a contractor who enters into a contract:
- 443 (i) for the management of a construction project; and
- 444 (ii) that allows the contractor to subcontract for additional labor and materials that are  
445 not included in the contractor's cost proposal submitted at the time of the procurement of the  
446 contractor's services; and
- 447 (b) does not include a contractor whose only subcontract work not included in the  
448 contractor's cost proposal submitted as part of the procurement of the contractor's services is to  
449 meet subcontracted portions of change orders approved within the scope of the project.
- 450 (16) "Construction subcontractor":
- 451 (a) means a person under contract with a contractor or another subcontractor to provide  
452 services or labor for the design or construction of a construction project;
- 453 (b) includes a general contractor or specialty contractor licensed or exempt from  
454 licensing under Title 58, Chapter 55, Utah Construction Trades Licensing Act; and
- 455 (c) does not include a supplier who provides only materials, equipment, or supplies to a  
456 contractor or subcontractor for a construction project.
- 457 (17) "Contract" means an agreement for a procurement.
- 458 (18) "Contract administration" means all functions, duties, and responsibilities  
459 associated with managing, overseeing, and carrying out a contract between a procurement unit  
460 and a contractor, including:
- 461 (a) implementing the contract;

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

464 (c) executing change orders;

465 (d) processing contract amendments;

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

467 (f) curing contract errors and deficiencies;

468 (g) terminating a contract;

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

470 (i) computing payments under the contract; and

471 (j) closing out a contract.

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

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

474 (a) more than one procurement unit; or

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

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

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

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

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

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

489 (26) "Design professional" means:

490 (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects  
491 Licensing Act; or

492 (b) an individual licensed as a professional engineer or professional land surveyor



493 under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing  
494 Act.

495 (27) "Design professional procurement process" means the procurement process  
496 described in Part 15, Design Professional Services.

497 (28) "Design-build" means the procurement of design professional services and  
498 construction by the use of a single contract.

499 (29) "Design professional services" means:

500 (a) professional services within the scope of the practice of architecture as defined in  
501 Section [58-3a-102](#);

502 (b) professional engineering as defined in Section [58-22-102](#); or

503 (c) master planning and programming services.

504 (30) "Director" means the director of the division.

505 (31) "Division" means the Division of Purchasing and General Services, created in  
506 Section [63A-2-101](#).

507 (32) "Educational procurement unit" means:

508 (a) a school district;

509 (b) a public school, including a local school board or a charter school;

510 (c) the Utah Schools for the Deaf and Blind;

511 (d) the Utah Education and Telehealth Network;

512 (e) an institution of higher education of the state described in Section [53B-1-102](#); or

513 (f) the State Board of Education.

514 (33) "Established catalogue price" means the price included in a catalogue, price list,  
515 schedule, or other form that:

516 (a) is regularly maintained by a manufacturer or contractor;

517 (b) is published or otherwise available for inspection by customers; and

518 (c) states prices at which sales are currently or were last made to a significant number  
519 of any category of buyers or buyers constituting the general buying public for the supplies or  
520 services involved.

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

523 (35) "Fixed price contract" means a contract that provides a price, for each

524 procurement item obtained under the contract, that is not subject to adjustment except to the  
525 extent that:

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

528 (b) an adjustment is required by law.

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

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

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

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

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

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

540 (b) for an executive branch procurement unit:

541 (i) the director of the division; or

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

543 (c) for a judicial procurement unit:

544 (i) the Judicial Council; or

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

546 (d) for a local government procurement unit:

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

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

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

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

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

555 (h) for a conservation district, the board of supervisors of the conservation district or a  
556 designee of the board of supervisors;

557 (i) for a public corporation, the board of directors of the public corporation or a  
558 designee of the board of directors;

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

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

563 (l) for an institution of higher education described in Section 53B-2-101, the president  
564 of the institution of higher education, or the president's designee;

565 (m) for a public transit district, the board of trustees or a designee of the board of  
566 trustees;

567 (n) for the State Board of Education, the State Board of Education or a designee of the  
568 State Board of Education; or

569 (o) for the Utah Communications Authority, established in Section 63H-7a-201, the  
570 executive director of the Utah Communications Authority or a designee of the executive  
571 director.

572 (39) "Immaterial error":

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

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

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

577 (b) includes:

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

580 (ii) a typographical error;

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

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

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

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

586 procurement unit; and

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

588 (ii) provides a maximum purchase limit.

589 (41) "Independent procurement authority" means authority granted to a procurement

590 unit under Subsection 63G-6a-106(4)(a).

591 (42) "Invitation for bids":

592 (a) means a document used to solicit:

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

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

595 (b) includes all documents attached to or incorporated by reference in a document

596 described in Subsection (42)(a).

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

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

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

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

601 (44) "Judicial procurement unit" means:

602 (a) the Utah Supreme Court;

603 (b) the Utah Court of Appeals;

604 (c) the Judicial Council;

605 (d) a state judicial district; or

606 (e) an office, committee, subcommittee, or other organization within the state judicial

607 branch.

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

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

610 (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and

611 profit for a specified number of labor hours or days.

612 (46) "Legislative procurement unit" means:

613 (a) the Legislature;

614 (b) the Senate;

615 (c) the House of Representatives;

616 (d) a staff office of the Legislature, the Senate, or the House of Representatives; or

617 (e) a committee, subcommittee, commission, or other organization:  
618 (i) within the state legislative branch; or  
619 (ii) (A) that is created by statute to advise or make recommendations to the Legislature;  
620 (B) the membership of which includes legislators; and  
621 (C) for which the Office of Legislative Research and General Counsel provides staff  
622 support.

623 (47) "Local building authority" means the same as that term is defined in Section  
624 [17D-2-102](#).

625 (48) "Local district" means the same as that term is defined in Section [17B-1-102](#).

626 (49) "Local government procurement unit" means:

627 (a) a county or municipality, and each office or agency of the county or municipality,  
628 unless the county or municipality adopts its own procurement code by ordinance;

629 (b) a county or municipality that has adopted this entire chapter by ordinance, and each  
630 office or agency of that county or municipality; or

631 (c) a county or municipality that has adopted a portion of this chapter by ordinance, to  
632 the extent that a term in the ordinance is used in the adopted portion of this chapter, and each  
633 office or agency of that county or municipality.

634 (50) "Multiple award contracts" means the award of a contract for an indefinite  
635 quantity of a procurement item to more than one person.

636 (51) "Multiyear contract" means a contract that extends beyond a one-year period,  
637 including a contract that permits renewal of the contract, without competition, beyond the first  
638 year of the contract.

639 (52) "Municipality" means a city, town, or metro township.

640 (53) "Nonadopting local government procurement unit" means:

641 (a) a county or municipality that has not adopted Part 16, Protests, Part 17,  
642 Procurement Appeals Board, Part 18, Appeals to Court and Court Proceedings, and Part 19,  
643 General Provisions Related to Protest or Appeal; and

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

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

647 (55) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference

648 under the requirements of this chapter.

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

650 (57) "Procurement":

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

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

656 (i) preparing and issuing a solicitation; and

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

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

660 (c) does not include a grant.

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

662 (59) "Procurement officer" means:

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

664 (i) the head of the procurement unit;

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

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

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

669 (60) "Procurement unit":

670 (a) means:

671 (i) a legislative procurement unit;

672 (ii) an executive branch procurement unit;

673 (iii) a judicial procurement unit;

674 (iv) an educational procurement unit;

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

676 (vi) a local government procurement unit;

677 (vii) a local district;

678 (viii) a special service district;

679 (ix) a local building authority;

680 (x) a conservation district;

681 (xi) a public corporation; or

682 (xii) a public transit district; and

683 (b) does not include a political subdivision created under Title 11, Chapter 13,

684 Interlocal Cooperation Act.

685 (61) "Professional service" means labor, effort, or work that requires an elevated  
686 degree of specialized knowledge and discretion, including labor, effort, or work in the field of:

687 (a) accounting;

688 (b) administrative law judge service;

689 (c) architecture;

690 (d) construction design and management;

691 (e) engineering;

692 (f) financial services;

693 (g) information technology;

694 (h) the law;

695 (i) medicine;

696 (j) psychiatry; or

697 (k) underwriting.

698 (62) "Protest officer" means:

699 (a) for the division or a procurement unit with independent procurement authority:

700 (i) the head of the procurement unit;

701 (ii) the head of the procurement unit's designee who is an employee of the procurement  
702 unit; or

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

704 (b) for a procurement unit without independent procurement authority, the chief  
705 procurement officer or the chief procurement officer's designee who is an employee of the  
706 division.

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

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

- 710 (a) a procurement unit;
- 711 (b) a municipality or county, regardless of whether the municipality or county has
- 712 adopted this chapter or any part of this chapter; and
- 713 (c) any other government entity located in the state that expends public funds.
- 714 (65) "Public facility" means a building, structure, infrastructure, improvement, or other
- 715 facility of a public entity.
- 716 (66) "Public funds" means money, regardless of its source, including from the federal
- 717 government, that is owned or held by a procurement unit.
- 718 (67) "Public transit district" means a public transit district organized under Title 17B,
- 719 Chapter 2a, Part 8, Public Transit District Act.
- 720 (68) "Public-private partnership" means an arrangement or agreement, occurring on or
- 721 after January 1, 2017, between a procurement unit and one or more contractors to provide for a
- 722 public need through the development or operation of a project in which the contractor or
- 723 contractors share with the procurement unit the responsibility or risk of developing, owning,
- 724 maintaining, financing, or operating the project.
- 725 (69) "Qualified vendor" means a vendor who:
- 726 (a) is responsible; and
- 727 (b) submits a responsive statement of qualifications under Section [63G-6a-410](#) that
- 728 meets the minimum mandatory requirements, evaluation criteria, and any applicable score
- 729 thresholds set forth in the request for statement of qualifications.
- 730 (70) "Real property" means land and any building, fixture, improvement, appurtenance,
- 731 structure, or other development that is permanently affixed to land.
- 732 (71) "Request for information" means a nonbinding process through which a
- 733 procurement unit requests information relating to a procurement item.
- 734 (72) "Request for proposals" means a document used to solicit proposals to provide a
- 735 procurement item to a procurement unit, including all other documents that are attached to that
- 736 document or incorporated in that document by reference.
- 737 (73) "Request for proposals process" means the procurement process described in Part
- 738 7, Request for Proposals.
- 739 (74) "Request for statement of qualifications" means a document used to solicit
- 740 information about the qualifications of a person interested in responding to a potential



741 procurement, including all other documents attached to that document or incorporated in that  
742 document by reference.

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

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

746 (b) that:

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

748 (ii) provides a maximum purchase limit.

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

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

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

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

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

756 (79) "Service":

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

759 (b) includes a professional service; and

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

762 (80) "Small purchase process" means the procurement process described in Section  
763 [63G-6a-506](#).

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

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

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

770 (84) "Solicitation response" means:

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

772 (b) a proposal submitted in response to a request for proposals; or  
773 (c) a statement of qualifications submitted in response to a request for statement of  
774 qualifications.

775 (85) "Special service district" means the same as that term is defined in Section  
776 [17D-1-102](#).

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

- 780 (a) a requirement for inspecting or testing a procurement item; or
- 781 (b) preparing a procurement item for delivery.

782 (87) "Standard procurement process" means:

- 783 (a) the bidding process;
- 784 (b) the request for proposals process;
- 785 (c) the approved vendor list process;
- 786 (d) the small purchase process; or
- 787 (e) the design professional procurement process.

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

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

792 (90) "Subcontractor":

793 (a) means a person under contract to perform part of a contractual obligation under the  
794 control of the contractor, whether the person's contract is with the contractor directly or with  
795 another person who is under contract to perform part of a contractual obligation under the  
796 control of the contractor; and

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

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

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

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

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

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

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

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

808 (94) "Transitional costs":

809 (a) means the costs of changing:

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

811 procurement item; or

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

813 (b) includes:

814 (i) training costs;

815 (ii) conversion costs;

816 (iii) compatibility costs;

817 (iv) costs associated with system downtime;

818 (v) disruption of service costs;

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

820 (vii) installation costs; and

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

822 (c) does not include:

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

824 (ii) contract negotiation or drafting costs.

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

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

827 the procurement unit.

828 (96) "Vendor":

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

830 provide a procurement item; and

831 (b) includes:

832 (i) a bidder;

833 (ii) an offeror;

- 834 (iii) an approved vendor;  
835 (iv) a design professional; and  
836 (v) a person who submits an unsolicited proposal under Section 63G-6a-712.

837 Section 11. Section 63G-6a-804 is amended to read:

838 **63G-6a-804. Purchase of prison industry goods.**

839 (1) As used in this section, "applicable procurement unit" means a procurement unit  
840 that is not:

841 (a) a political subdivision of the state; or

842 (b) the Utah Schools for the Deaf and the Blind.

843 ~~[(1)]~~ (2) (a) ~~[A]~~ An applicable procurement unit ~~[that is not a political subdivision]~~  
844 shall purchase goods and services produced by the Utah Correctional Industries Division as  
845 provided in this section.

846 (b) A ~~[political subdivision of the state]~~ procurement unit that is not an applicable  
847 procurement unit may, and is encouraged to, purchase goods and services under this section.

848 (c) A procurement unit is not required to use a standard procurement process to  
849 purchase goods or services under this section.

850 ~~[(2)]~~ (3) On or before July 1 of each year, the director of the Utah Correctional  
851 Industries shall:

852 (a) publish and distribute to all procurement units and other interested public entities a  
853 catalog of goods and services provided by the Correctional Industries Division, including a  
854 description and price of each item offered for sale; and

855 (b) update and revise the catalog described in Subsection ~~[(2)]~~ (3)(a) during the year as  
856 the director considers necessary.

857 ~~[(3)]~~ (4) (a) ~~[A]~~ An applicable procurement unit ~~[that is not a political subdivision of~~  
858 ~~the state]~~ may not purchase any goods or services provided by the Correctional Industries  
859 Division from any other source unless it has been determined in writing by the director of  
860 Correctional Industries and by the procurement officer or, in the case of institutions of higher  
861 education, the institutional procurement officer, that purchase from the Correctional Industries  
862 Division is not feasible due to one of the following circumstances:

863 (i) the good or service offered by the division does not meet the reasonable  
864 requirements of the procurement unit;

865 (ii) the good or service cannot be supplied within a reasonable time by the division; or

866 (iii) the cost of the good or service, including basic price, transportation costs, and

867 other expenses of acquisition, is not competitive with the cost of procuring the item from

868 another source.

869 (b) In cases of disagreement under Subsection [~~(3)~~] (4)(a):

870 (i) the decision may be appealed to a board consisting of:

871 (A) the director of the Department of Corrections;

872 (B) the director of Administrative Services; and

873 (C) a neutral third party agreed upon by the other two members of the board;

874 (ii) in the case of an institution of higher education of the state, the president of the

875 institution, or the president's designee, shall make the final decision; or

876 (iii) in the case of any of the following entities, a person designated by the applicable

877 rulemaking authority shall make the final decision:

878 (A) a legislative procurement unit;

879 (B) a judicial procurement unit; or

880 (C) a public transit district.