

**PROJECT ENTITY PROCUREMENT MODIFICATIONS**

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Derrin R. Owens**

House Sponsor: Carl R. Albrecht

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**LONG TITLE**

**General Description:**

This bill amends provisions related to the procurement practices of project entities.

**Highlighted Provisions:**

This bill:

- ▶ defines terms; and
- ▶ requires project entities to:
  - adopt provisions related to procurement; and
  - comply with provisions of the Utah Procurement Code.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**11-13-316**, as enacted by Laws of Utah 2021, Second Special Session, Chapter 7

**11-13-603**, as last amended by Laws of Utah 2021, Second Special Session, Chapter 7

**63G-6a-103**, as last amended by Laws of Utah 2021, Chapters 179, 344, and 345

ENACTS:

**63G-6a-107.5**, Utah Code Annotated 1953

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

29 Section 1. Section **11-13-316** is amended to read:

30 **11-13-316. Project entity oversight.**

31 (1) Notwithstanding any other provision of law, a project entity is a political  
32 subdivision that:

33 (a) pursuant to Utah Constitution, Article VI, Section 33, is subject to the authority of  
34 the legislative auditor to conduct audits of any funds, functions, and accounts in any political  
35 subdivision of this state; and

36 (b) is subject to the requirement to provide the Office of the Legislative Auditor  
37 General with all records, documents, and reports necessary for the legislative auditor general or  
38 the office to fulfill the duties described in Subsection (1)(a).

39 (2) Subsection (1) takes precedence over Section [36-12-15](#).

40 (3) A project entity shall comply with Title 63G, Chapter 6a, Utah Procurement Code,  
41 except where, in accordance with Subsection (4), the governing board of a project entity  
42 unanimously agrees and adopts policies for procurement that enable the project entity to  
43 efficiently fulfill the project entity's responsibilities under the project entity's organization  
44 agreement.

45 (4) (a) If the governing board of a project entity adopts policies for procurement under  
46 Subsection (3), the adopted policies shall comply with:

47 (i) the purposes and policies described in Section [63G-6a-102](#); and

48 (ii) Title 63G, Chapter 6a, Part 10, Preferences.

49 (b) If a project entity does not adopt policies for procurement under Subsection (3),  
50 then for purposes of Title 63G, Chapter 6a, Utah Procurement Code:

51 (i) the project entity is a procurement unit, as defined in Section [63G-6a-103](#); and

52 (ii) the governing board is a procurement official, as defined in Section [63G-6a-103](#).

53 Section 2. Section **11-13-603** is amended to read:

54 **11-13-603. Taxed interlocal entity.**

55 (1) Except for purposes of an audit, examination, or review by the Office of the  
56 Legislative Auditor General as described in Subsection (8) and notwithstanding any other  
57 provision of law:

58 (a) the use of an asset by a taxed interlocal entity does not constitute the use of a public

59 asset;

60 (b) a taxed interlocal entity's use of an asset that was a public asset before the taxed  
61 interlocal entity's use of the asset does not constitute a taxed interlocal entity's use of a public  
62 asset;

63 (c) an official of a project entity is not a public treasurer; and

64 (d) a taxed interlocal entity's governing board shall determine and direct the use of an  
65 asset by the taxed interlocal entity.

66 (2) A taxed interlocal entity that is not a project entity is not subject to the provisions  
67 of Title 63G, Chapter 6a, Utah Procurement Code.

68 (3) (a) A taxed interlocal entity is not a participating local entity as defined in Section  
69 [67-3-12](#).

70 (b) For each fiscal year of a taxed interlocal entity, the taxed interlocal entity shall  
71 provide:

72 (i) the taxed interlocal entity's financial statements for and as of the end of the fiscal  
73 year and the prior fiscal year, including:

74 (A) the taxed interlocal entity's statement of net position as of the end of the fiscal year  
75 and the prior fiscal year, and the related statements of revenues and expenses and of cash flows  
76 for the fiscal year; or

77 (B) financial statements that are equivalent to the financial statements described in  
78 Subsection (3)(b)(i)(A) and, at the time the financial statements were created, were in  
79 compliance with generally accepted accounting principles that are applicable to taxed interlocal  
80 entities; and

81 (ii) the accompanying auditor's report and management's discussion and analysis with  
82 respect to the taxed interlocal entity's financial statements for and as of the end of the fiscal  
83 year.

84 (c) The taxed interlocal entity shall provide the information described in Subsection  
85 (3)(b) within a reasonable time after the taxed interlocal entity's independent auditor delivers to  
86 the taxed interlocal entity's governing board the auditor's report with respect to the financial  
87 statements for and as of the end of the fiscal year.

88 (d) Notwithstanding Subsections (3)(b) and (c) or a taxed interlocal entity's compliance  
89 with one or more of the requirements of Title 63A, Chapter 3, Division of Finance:

90 (i) the taxed interlocal entity is not subject to Title 63A, Chapter 3, Division of  
91 Finance; and

92 (ii) the information described in Subsection (3)(b)(i) or (ii) does not constitute public  
93 financial information as defined in Section 67-3-12.

94 (4) (a) A taxed interlocal entity's governing board is not a governing board as defined  
95 in Section 51-2a-102.

96 (b) A taxed interlocal entity is not subject to the provisions of Title 51, Chapter 2a,  
97 Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local  
98 Entities Act.

99 (5) Notwithstanding any other provision of law, a taxed interlocal entity is not subject  
100 to the following provisions:

101 (a) Part 4, Governance;

102 (b) Part 5, Fiscal Procedures for Interlocal Entities;

103 (c) Subsection 11-13-204(1)(a)(i) or (ii)(J);

104 (d) Subsection 11-13-206(1)(f);

105 (e) Subsection 11-13-218(5)(a);

106 (f) Section 11-13-225;

107 (g) Section 11-13-226; or

108 (h) Section 53-2a-605.

109 (6) (a) In addition to having the powers described in Subsection 11-13-204(1)(a)(ii), a  
110 taxed interlocal entity may, for the regulation of the entity's affairs and conduct of its business,  
111 adopt, amend, or repeal bylaws, policies, or procedures.

112 (b) Nothing in Part 4, Governance, or Part 5, Fiscal Procedures for Interlocal Entities,  
113 may be construed to limit the power or authority of a taxed interlocal entity.

114 (7) (a) A governmental law enacted after May 12, 2015, and on or before November  
115 10, 2021, is not applicable to, is not binding upon, and does not have effect on a taxed  
116 interlocal entity that is a project entity unless the governmental law expressly states the section  
117 of governmental law to be applicable to and binding upon the taxed interlocal entity with the  
118 following words: "[Applicable section or subsection number] constitutes an exception to  
119 Subsection 11-13-603(7)(a) and is applicable to and binding upon a taxed interlocal entity."

120 (b) A governmental law enacted after May 12, 2015, is not applicable to, is not binding

121 upon, and does not have effect on a taxed interlocal entity that is an energy services interlocal  
122 entity unless the governmental law expressly states the section of governmental law to be  
123 applicable to and binding upon the energy services interlocal entity with the following words:

124 "[Applicable section or subsection number] constitutes an exception to Subsection  
125 11-13-603(7)(a) and is applicable to and binding upon an energy services interlocal entity."

126 (c) Sections 11-13-601 through 11-13-608 constitute an exception to Subsections (7)(a)  
127 and (7)(b) and are applicable to and binding upon a taxed interlocal entity.

128 (8) (a) Notwithstanding any other provision of law, a taxed interlocal entity that is a  
129 project entity is a political subdivision that:

130 (i) pursuant to Utah Constitution, Article VI, Section 33, is subject to the authority of  
131 the legislative auditor to conduct audits of any funds, functions, and accounts in any political  
132 subdivision of this state; and

133 (ii) is subject to the requirement to provide the Office of the Legislative Auditor  
134 General with all records, documents, and reports necessary of the legislative auditor general or  
135 the office to fulfill the duties described in Subsection (8)(a)(i).

136 (b) Subsection (8)(a) takes precedence over Section 36-12-15.

137 Section 3. Section 63G-6a-103 is amended to read:

138 **63G-6a-103. Definitions.**

139 As used in this chapter:

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

142 (2) "Approved vendor list" means a list of approved vendors established under Section  
143 63G-6a-507.

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

146 (4) "Bidder" means a person who submits a bid or price quote in response to an  
147 invitation for bids.

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

149 (6) "Board" means the Utah State Procurement Policy Board, created in Section  
150 63G-6a-202.

151 (7) "Building board" means the State Building Board, created in Section 63A-5b-201.

152 (8) "Change directive" means a written order signed by the procurement officer that  
153 directs the contractor to suspend work or make changes, as authorized by contract, without the  
154 consent of the contractor.

155 (9) "Change order" means a written alteration in specifications, delivery point, rate of  
156 delivery, period of performance, price, quantity, or other provisions of a contract, upon mutual  
157 agreement of the parties to the contract.

158 (10) "Chief procurement officer" means the individual appointed under Section  
159 [63A-2-102](#).

160 (11) "Conducting procurement unit" means a procurement unit that conducts all  
161 aspects of a procurement:

162 (a) except:

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

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

165 (b) including:

166 (i) preparing any solicitation document;

167 (ii) appointing an evaluation committee;

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

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

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

173 (vi) contract administration.

174 (12) "Conservation district" means the same as that term is defined in Section  
175 [17D-3-102](#).

176 (13) "Construction project":

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

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

182 (14) "Construction manager/general contractor":

- 183 (a) means a contractor who enters into a contract:
- 184 (i) for the management of a construction project; and
- 185 (ii) that allows the contractor to subcontract for additional labor and materials that are
- 186 not included in the contractor's cost proposal submitted at the time of the procurement of the
- 187 contractor's services; and
- 188 (b) does not include a contractor whose only subcontract work not included in the
- 189 contractor's cost proposal submitted as part of the procurement of the contractor's services is to
- 190 meet subcontracted portions of change orders approved within the scope of the project.
- 191 (15) "Construction subcontractor":
- 192 (a) means a person under contract with a contractor or another subcontractor to provide
- 193 services or labor for the design or construction of a construction project;
- 194 (b) includes a general contractor or specialty contractor licensed or exempt from
- 195 licensing under Title 58, Chapter 55, Utah Construction Trades Licensing Act; and
- 196 (c) does not include a supplier who provides only materials, equipment, or supplies to a
- 197 contractor or subcontractor for a construction project.
- 198 (16) "Contract" means an agreement for a procurement.
- 199 (17) "Contract administration" means all functions, duties, and responsibilities
- 200 associated with managing, overseeing, and carrying out a contract between a procurement unit
- 201 and a contractor, including:
- 202 (a) implementing the contract;
- 203 (b) ensuring compliance with the contract terms and conditions by the conducting
- 204 procurement unit and the contractor;
- 205 (c) executing change orders;
- 206 (d) processing contract amendments;
- 207 (e) resolving, to the extent practicable, contract disputes;
- 208 (f) curing contract errors and deficiencies;
- 209 (g) terminating a contract;
- 210 (h) measuring or evaluating completed work and contractor performance;
- 211 (i) computing payments under the contract; and
- 212 (j) closing out a contract.
- 213 (18) "Contractor" means a person who is awarded a contract with a procurement unit.

214 (19) "Cooperative procurement" means procurement conducted by, or on behalf of:

215 (a) more than one procurement unit; or

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

217 (20) "Cooperative purchasing organization" means an organization, association, or

218 alliance of purchasers established to combine purchasing power in order to obtain the best

219 value for the purchasers by engaging in procurements in accordance with Section [63G-6a-2105](#).

220 (21) "Cost-plus-a-percentage-of-cost contract" means a contract under which the

221 contractor is paid a percentage of the total actual expenses or costs in addition to the

222 contractor's actual expenses or costs.

223 (22) "Cost-reimbursement contract" means a contract under which a contractor is

224 reimbursed for costs which are allowed and allocated in accordance with the contract terms and

225 the provisions of this chapter, and a fee, if any.

226 (23) "Days" means calendar days, unless expressly provided otherwise.

227 (24) "Definite quantity contract" means a fixed price contract that provides for a

228 specified amount of supplies over a specified period, with deliveries scheduled according to a

229 specified schedule.

230 (25) "Design professional" means:

231 (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects

232 Licensing Act;

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

234 under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing

235 Act; or

236 (c) an individual certified as a commercial interior designer under Title 58, Chapter 86,

237 State Certification of Commercial Interior Designers Act.

238 (26) "Design professional procurement process" means the procurement process

239 described in Part 15, Design Professional Services.

240 (27) "Design professional services" means:

241 (a) professional services within the scope of the practice of architecture as defined in

242 Section [58-3a-102](#);

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

244 (c) master planning and programming services; or



245 (d) services within the scope of the practice of commercial interior design, as defined  
246 in Section 58-86-102.

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

249 (29) "Division" means the Division of Purchasing and General Services, created in  
250 Section 63A-2-101.

251 (30) "Educational procurement unit" means:

252 (a) a school district;

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

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

255 (d) the Utah Education and Telehealth Network;

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

257 (f) the State Board of Education.

258 (31) "Established catalogue price" means the price included in a catalogue, price list,  
259 schedule, or other form that:

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

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

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

265 (32) (a) "Executive branch procurement unit" means a department, division, office,  
266 bureau, agency, or other organization within the state executive branch.

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

269 (33) "Facilities division" means the Division of Facilities Construction and  
270 Management, created in Section 63A-5b-301.

271 (34) "Fixed price contract" means a contract that provides a price, for each  
272 procurement item obtained under the contract, that is not subject to adjustment except to the  
273 extent that:

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

276 (b) an adjustment is required by law.

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

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

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

282 (36) "Grant" means an expenditure of public funds or other assistance, or an agreement  
283 to expend public funds or other assistance, for a public purpose authorized by law, without  
284 acquiring a procurement item in exchange.

285 (37) "Immaterial error":

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

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

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

290 (b) includes:

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

293 (ii) a typographical error;

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

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

296 (38) "Indefinite quantity contract" means a fixed price contract that:

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

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

300 (ii) provides a maximum purchase limit.

301 (39) "Independent procurement unit" means:

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

303 (ii) a judicial branch procurement unit;

304 (iii) an educational procurement unit;

305 (iv) a local government procurement unit;

306 (v) a conservation district;

- 307 (vi) a local building authority;
- 308 (vii) a local district;
- 309 (viii) a public corporation;
- 310 (ix) a special service district; or
- 311 (x) the Utah Communications Authority, established in Section [63H-7a-201](#);
- 312 (b) the building board or the facilities division, but only to the extent of the
- 313 procurement authority provided under Title 63A, Chapter 5b, Administration of State
- 314 Facilities;
- 315 (c) the attorney general, but only to the extent of the procurement authority provided
- 316 under Title 67, Chapter 5, Attorney General;
- 317 (d) the Department of Transportation, but only to the extent of the procurement
- 318 authority provided under Title 72, Transportation Code; or
- 319 (e) any other executive branch department, division, office, or entity that has statutory
- 320 procurement authority outside this chapter, but only to the extent of that statutory procurement
- 321 authority.
- 322 (40) "Invitation for bids":
- 323 (a) means a document used to solicit:
- 324 (i) bids to provide a procurement item to a procurement unit; or
- 325 (ii) quotes for a price of a procurement item to be provided to a procurement unit; and
- 326 (b) includes all documents attached to or incorporated by reference in a document
- 327 described in Subsection (40)(a).
- 328 (41) "Issuing procurement unit" means a procurement unit that:
- 329 (a) reviews a solicitation to verify that it is in proper form;
- 330 (b) causes the notice of a solicitation to be published; and
- 331 (c) negotiates and approves the terms and conditions of a contract.
- 332 (42) "Judicial procurement unit" means:
- 333 (a) the Utah Supreme Court;
- 334 (b) the Utah Court of Appeals;
- 335 (c) the Judicial Council;
- 336 (d) a state judicial district; or
- 337 (e) an office, committee, subcommittee, or other organization within the state judicial

338 branch.

339 (43) "Labor hour contract" is a contract under which:

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

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

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

343 (44) "Legislative procurement unit" means:

344 (a) the Legislature;

345 (b) the Senate;

346 (c) the House of Representatives;

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

348 (e) a committee, subcommittee, commission, or other organization:

349 (i) within the state legislative branch; or

350 (ii) (A) that is created by statute to advise or make recommendations to the Legislature;

351 (B) the membership of which includes legislators; and

352 (C) for which the Office of Legislative Research and General Counsel provides staff

353 support.

354 (45) "Local building authority" means the same as that term is defined in Section

355 [17D-2-102](#).

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

357 (47) "Local government procurement unit" means:

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

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

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

365 (48) "Multiple award contracts" means the award of a contract for an indefinite  
366 quantity of a procurement item to more than one person.

367 (49) "Multiyear contract" means a contract that extends beyond a one-year period,  
368 including a contract that permits renewal of the contract, without competition, beyond the first

369 year of the contract.

370 (50) "Municipality" means a city, town, or metro township.

371 (51) "Nonadopting local government procurement unit" means:

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

375 (b) each office or agency of a county or municipality described in Subsection (51)(a).

376 (52) "Offeror" means a person who submits a proposal in response to a request for  
377 proposals.

378 (53) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference  
379 under the requirements of this chapter.

380 (54) "Procure" means to acquire a procurement item through a procurement.

381 (55) "Procurement" means the acquisition of a procurement item through an  
382 expenditure of public funds, or an agreement to expend public funds, including an acquisition  
383 through a public-private partnership.

384 (56) "Procurement item" means an item of personal property, a technology, a service,  
385 or a construction project.

386 (57) "Procurement official" means:

387 (a) for a procurement unit other than an independent procurement unit, the chief  
388 procurement officer;

389 (b) for a legislative procurement unit, the individual, individuals, or body designated in  
390 a policy adopted by the Legislative Management Committee;

391 (c) for a judicial procurement unit, the Judicial Council or an individual or body  
392 designated by the Judicial Council by rule;

393 (d) for a local government procurement unit:

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

395 (ii) an individual or body designated by the local government procurement unit;

396 (e) for a local district, the board of trustees of the local district or the board of trustees'  
397 designee;

398 (f) for a special service district, the governing body of the special service district or the  
399 governing body's designee;

400 (g) for a local building authority, the board of directors of the local building authority  
401 or the board of directors' designee;

402 (h) for a conservation district, the board of supervisors of the conservation district or  
403 the board of supervisors' designee;

404 (i) for a public corporation, the board of directors of the public corporation or the board  
405 of directors' designee;

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

408 (k) for a charter school, the individual or body with executive authority over the charter  
409 school or the designee of the individual or body;

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

412 (m) for the State Board of Education, the State Board of Education or the State Board  
413 of Education's designee;

414 (n) for the Utah Board of Higher Education, the Commissioner of Higher Education or  
415 the designee of the Commissioner of Higher Education;

416 (o) for the Utah Communications Authority, established in Section [63H-7a-201](#), the  
417 executive director of the Utah Communications Authority or the executive director's designee;  
418 or

419 (p) (i) for the building board, and only to the extent of procurement activities of the  
420 building board as an independent procurement unit under the procurement authority provided  
421 under Title 63A, Chapter 5b, Administration of State Facilities, the director of the building  
422 board or the director's designee;

423 (ii) for the facilities division, and only to the extent of procurement activities of the  
424 facilities division as an independent procurement unit under the procurement authority  
425 provided under Title 63A, Chapter 5b, Administration of State Facilities, the director of the  
426 facilities division or the director's designee;

427 (iii) for the attorney general, and only to the extent of procurement activities of the  
428 attorney general as an independent procurement unit under the procurement authority provided  
429 under Title 67, Chapter 5, Attorney General, the attorney general or the attorney general's  
430 designee;

431 (iv) for the Department of Transportation created in Section [72-1-201](#), and only to the  
432 extent of procurement activities of the Department of Transportation as an independent  
433 procurement unit under the procurement authority provided under Title 72, Transportation  
434 Code, the executive director of the Department of Transportation or the executive director's  
435 designee; or

436 (v) for any other executive branch department, division, office, or entity that has  
437 statutory procurement authority outside this chapter, and only to the extent of the procurement  
438 activities of the department, division, office, or entity as an independent procurement unit  
439 under the procurement authority provided outside this chapter for the department, division,  
440 office, or entity, the chief executive officer of the department, division, office, or entity or the  
441 chief executive officer's designee.

442 (58) "Procurement unit":

443 (a) means:

444 (i) a legislative procurement unit;

445 (ii) an executive branch procurement unit;

446 (iii) a judicial procurement unit;

447 (iv) an educational procurement unit;

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

449 (vi) a local government procurement unit;

450 (vii) a local district;

451 (viii) a special service district;

452 (ix) a local building authority;

453 (x) a conservation district;

454 (xi) a public corporation; and

455 (xii) a project entity, as that term is defined in Section [11-13-301](#); and

456 (b) except for a project entity, as described in Subsection (58)(a), does not include a  
457 political subdivision created under Title 11, Chapter 13, Interlocal Cooperation Act.

458 (59) "Professional service" means labor, effort, or work that requires specialized  
459 knowledge, expertise, and discretion, including labor, effort, or work in the field of:

460 (a) accounting;

461 (b) administrative law judge service;

- 462 (c) architecture;
- 463 (d) construction design and management;
- 464 (e) engineering;
- 465 (f) financial services;
- 466 (g) information technology;
- 467 (h) the law;
- 468 (i) medicine;
- 469 (j) psychiatry; or
- 470 (k) underwriting.
- 471 (60) "Protest officer" means:
- 472 (a) for the division or an independent procurement unit:
- 473 (i) the procurement official;
- 474 (ii) the procurement official's designee who is an employee of the procurement unit; or
- 475 (iii) a person designated by rule made by the rulemaking authority; or
- 476 (b) for a procurement unit other than an independent procurement unit, the chief
- 477 procurement officer or the chief procurement officer's designee who is an employee of the
- 478 division.
- 479 (61) "Public corporation" means the same as that term is defined in Section [63E-1-102](#).
- 480 (62) "Public entity" means the state or any other government entity within the state that
- 481 expends public funds.
- 482 (63) "Public facility" means a building, structure, infrastructure, improvement, or other
- 483 facility of a public entity.
- 484 (64) "Public funds" means money, regardless of its source, including from the federal
- 485 government, that is owned or held by a procurement unit.
- 486 (65) "Public transit district" means a public transit district organized under Title 17B,
- 487 Chapter 2a, Part 8, Public Transit District Act.
- 488 (66) "Public-private partnership" means an arrangement or agreement, occurring on or
- 489 after January 1, 2017, between a procurement unit and one or more contractors to provide for a
- 490 public need through the development or operation of a project in which the contractor or
- 491 contractors share with the procurement unit the responsibility or risk of developing, owning,
- 492 maintaining, financing, or operating the project.



493 (67) "Qualified vendor" means a vendor who:

494 (a) is responsible; and

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

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

500 (69) "Request for information" means a nonbinding process through which a  
501 procurement unit requests information relating to a procurement item.

502 (70) "Request for proposals" means a document used to solicit proposals to provide a  
503 procurement item to a procurement unit, including all other documents that are attached to that  
504 document or incorporated in that document by reference.

505 (71) "Request for proposals process" means the procurement process described in Part  
506 7, Request for Proposals.

507 (72) "Request for statement of qualifications" means a document used to solicit  
508 information about the qualifications of a person interested in responding to a potential  
509 procurement, including all other documents attached to that document or incorporated in that  
510 document by reference.

511 (73) "Requirements contract" means a contract:

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

514 (b) that:

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

516 (ii) provides a maximum purchase limit.

517 (74) "Responsible" means being capable, in all respects, of:

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

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

521 (75) "Responsive" means conforming in all material respects to the requirements of a  
522 solicitation.

523 (76) "Rule" includes a policy or regulation adopted by the rulemaking authority, if

524 adopting a policy or regulation is the method the rulemaking authority uses to adopt provisions  
525 that govern the applicable procurement unit.

526 (77) "Rulemaking authority" means:

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

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

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

531 (A) for the building board or the facilities division, the building board;

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

533 (C) for the Department of Transportation created in Section [72-1-201](#), the executive  
534 director of the Department of Transportation; and

535 (D) for any other executive branch department, division, office, or entity that has  
536 statutory procurement authority outside this chapter, the governing authority of the department,  
537 division, office, or entity; and

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

539 (d) for a local government procurement unit:

540 (i) the governing body of the local government unit; or

541 (ii) an individual or body designated by the local government procurement unit;

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

544 (f) for a state institution of higher education, the Utah Board of Higher Education;

545 (g) for the State Board of Education or the Utah Schools for the Deaf and the Blind, the  
546 State Board of Education;

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

548 (i) for a local district other than a public transit district or for a special service district,  
549 the board, except to the extent that the board of trustees of the local district or the governing  
550 body of the special service district makes its own rules:

551 (i) with respect to a subject addressed by board rules; or

552 (ii) that are in addition to board rules;

553 (j) for the Utah Educational Savings Plan, created in Section [53B-8a-103](#), the Utah  
554 Board of Higher Education;

555 (k) for the School and Institutional Trust Lands Administration, created in Section  
556 53C-1-201, the School and Institutional Trust Lands Board of Trustees;

557 (l) for the School and Institutional Trust Fund Office, created in Section 53D-1-201,  
558 the School and Institutional Trust Fund Board of Trustees;

559 (m) for the Utah Communications Authority, established in Section 63H-7a-201, the  
560 Utah Communications Authority board, created in Section 63H-7a-203; or

561 (n) for any other procurement unit, the board.

562 (78) "Service":

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

565 (b) includes a professional service; and

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

568 (79) "Small purchase process" means the procurement process described in Section  
569 63G-6a-506.

570 (80) "Sole source contract" means a contract resulting from a sole source procurement.

571 (81) "Sole source procurement" means a procurement without competition pursuant to  
572 a determination under Subsection 63G-6a-802(1)(a) that there is only one source for the  
573 procurement item.

574 (82) "Solicitation" means an invitation for bids, request for proposals, or request for  
575 statement of qualifications.

576 (83) "Solicitation response" means:

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

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

579 (c) a statement of qualifications submitted in response to a request for statement of  
580 qualifications.

581 (84) "Special service district" means the same as that term is defined in Section  
582 17D-1-102.

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

- 586 (a) a requirement for inspecting or testing a procurement item; or
- 587 (b) preparing a procurement item for delivery.
- 588 (86) "Standard procurement process" means:
- 589 (a) the bidding process;
- 590 (b) the request for proposals process;
- 591 (c) the approved vendor list process;
- 592 (d) the small purchase process; or
- 593 (e) the design professional procurement process.
- 594 (87) "State cooperative contract" means a contract awarded by the division for and in
- 595 behalf of all public entities.
- 596 (88) "Statement of qualifications" means a written statement submitted to a
- 597 procurement unit in response to a request for statement of qualifications.
- 598 (89) "Subcontractor":
- 599 (a) means a person under contract to perform part of a contractual obligation under the
- 600 control of the contractor, whether the person's contract is with the contractor directly or with
- 601 another person who is under contract to perform part of a contractual obligation under the
- 602 control of the contractor; and
- 603 (b) includes a supplier, distributor, or other vendor that furnishes supplies or services
- 604 to a contractor.
- 605 (90) "Technology" means the same as "information technology," as defined in Section
- 606 [63A-16-102](#).
- 607 (91) "Tie bid" means that the lowest responsive bids of responsible bidders are
- 608 identical in price.
- 609 (92) "Time and materials contract" means a contract under which the contractor is paid:
- 610 (a) the actual cost of direct labor at specified hourly rates;
- 611 (b) the actual cost of materials and equipment usage; and
- 612 (c) an additional amount, expressly described in the contract, to cover overhead and
- 613 profit, that is not based on a percentage of the cost to the contractor.
- 614 (93) "Transitional costs":
- 615 (a) means the costs of changing:
- 616 (i) from an existing provider of a procurement item to another provider of that

617 procurement item; or

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

619 (b) includes:

620 (i) training costs;

621 (ii) conversion costs;

622 (iii) compatibility costs;

623 (iv) costs associated with system downtime;

624 (v) disruption of service costs;

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

626 (vii) installation costs; and

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

628 (c) does not include:

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

630 (ii) contract negotiation or drafting costs.

631 (94) "Vendor":

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

633 provide a procurement item; and

634 (b) includes:

635 (i) a bidder;

636 (ii) an offeror;

637 (iii) an approved vendor;

638 (iv) a design professional; and

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

640 Section 4. Section **63G-6a-107.5** is enacted to read:

641 **63G-6a-107.5. Application of chapter to project entities.**

642 (1) As used in this Section, "project entity" means the same as that term is defined in

643 Section [11-13-103](#).

644 (2) This chapter applies to a project entity as described in Subsections [11-13-316\(3\)](#)

645 and (4).

646 (3) Notwithstanding Subsection (2), a project entity is subject to and shall comply with:

647 (a) Part 10, Preferences;

- 648            (b) the policies described in Section [63G-6a-102](#); and
- 649            (c) any rules that the project entity adopts under this chapter.