

Senator Derrin R. Owens proposes the following substitute bill:

PROJECT ENTITY OVERSIGHT MODIFICATIONS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Derrin R. Owens

House Sponsor: Val L. Peterson

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires project entities to comply with the Open and Public Meetings Act;
- ▶ describes situations in which a project entity may close a meeting under the Open and Public Meetings Act; 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:



- 26 [11-13-316](#), as enacted by Laws of Utah 2021, Second Special Session, Chapter 7
- 27 [11-13-603](#), as last amended by Laws of Utah 2021, Second Special Session, Chapter 7
- 28 [52-4-103](#), as last amended by Laws of Utah 2019, Chapters 25 and 246
- 29 [52-4-204](#), as last amended by Laws of Utah 2021, Chapter 217
- 30 [52-4-205](#), as last amended by Laws of Utah 2021, Chapters 179 and 231
- 31 [63G-6a-103](#), as last amended by Laws of Utah 2021, Chapters 179, 344, and 345

32 ENACTS:

33 [63G-6a-107.5](#), Utah Code Annotated 1953

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

36 Section 1. Section [11-13-316](#) is amended to read:

37 **11-13-316. Project entity oversight.**

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

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

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

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

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

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

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

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

56 (b) If a project entity does not adopt policies for procurement under Subsection (3),

57 then for purposes of Title 63G, Chapter 6a, Utah Procurement Code:

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

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

60 (5) A project entity shall comply with Title 52, Chapter 4, Open and Public Meetings

61 Act.

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

63 **11-13-603. Taxed interlocal entity.**

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

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

69 (b) a taxed interlocal entity's use of an asset that was a public asset before the taxed
70 interlocal entity's use of the asset does not constitute a taxed interlocal entity's use of a public
71 asset;

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

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

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

77 (3) (a) A taxed interlocal entity is not a participating local entity as defined in Section
78 67-3-12.

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

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

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

86 (B) financial statements that are equivalent to the financial statements described in
87 Subsection (3)(b)(i)(A) and, at the time the financial statements were created, were in

88 compliance with generally accepted accounting principles that are applicable to taxed interlocal
89 entities; and

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

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

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

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

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

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

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

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

110 (a) Part 4, Governance;

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

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

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

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

115 (f) Section 11-13-225;

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

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

118 (6) (a) In addition to having the powers described in Subsection 11-13-204(1)(a)(ii), a

119 taxed interlocal entity may, for the regulation of the entity's affairs and conduct of its business,
120 adopt, amend, or repeal bylaws, policies, or procedures.

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

123 (7) (a) A governmental law enacted after May 12, 2015, and on or before November
124 10, 2021, is not applicable to, is not binding upon, and does not have effect on a taxed
125 interlocal entity that is a project entity unless the governmental law expressly states the section
126 of governmental law to be applicable to and binding upon the taxed interlocal entity with the
127 following words: "[Applicable section or subsection number] constitutes an exception to
128 Subsection 11-13-603(7)(a) and is applicable to and binding upon a taxed interlocal entity."

129 (b) A governmental law enacted after May 12, 2015, is not applicable to, is not binding
130 upon, and does not have effect on a taxed interlocal entity that is an energy services interlocal
131 entity unless the governmental law expressly states the section of governmental law to be
132 applicable to and binding upon the energy services interlocal entity with the following words:
133 "[Applicable section or subsection number] constitutes an exception to Subsection
134 11-13-603(7)(a) and is applicable to and binding upon an energy services interlocal entity."

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

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

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

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

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

146 Section 3. Section 52-4-103 is amended to read:

147 **52-4-103. Definitions.**

148 As used in this chapter:

149 (1) "Anchor location" means the physical location from which:

150 (a) an electronic meeting originates; or

151 (b) the participants are connected.

152 (2) "Capitol hill complex" means the grounds and buildings within the area bounded by
153 300 North Street, Columbus Street, 500 North Street, and East Capitol Boulevard in Salt Lake
154 City.

155 (3) (a) "Convening" means the calling together of a public body by a person authorized
156 to do so for the express purpose of discussing or acting upon a subject over which that public
157 body has jurisdiction or advisory power.

158 (b) "Convening" does not include the initiation of a routine conversation between
159 members of a board of trustees of a large public transit district if the members involved in the
160 conversation do not, during the conversation, take a tentative or final vote on the matter that is
161 the subject of the conversation.

162 (4) "Electronic meeting" means a public meeting convened or conducted by means of a
163 conference using electronic communications.

164 (5) "Electronic message" means a communication transmitted electronically, including:

165 (a) electronic mail;

166 (b) instant messaging;

167 (c) electronic chat;

168 (d) text messaging, as that term is defined in Section 76-4-401; or

169 (e) any other method that conveys a message or facilitates communication
170 electronically.

171 (6) (a) "Meeting" means the convening of a public body or a specified body, with a
172 quorum present, including a workshop or an executive session, whether in person or by means
173 of electronic communications, for the purpose of discussing, receiving comments from the
174 public about, or acting upon a matter over which the public body or specific body has
175 jurisdiction or advisory power.

176 (b) "Meeting" does not mean:

177 (i) a chance gathering or social gathering;

178 (ii) a convening of the State Tax Commission to consider a confidential tax matter in
179 accordance with Section 59-1-405; or

180 (iii) a convening of a three-member board of trustees of a large public transit district as

181 defined in Section [17B-2a-802](#) if:

182 (A) the board members do not, during the conversation, take a tentative or final vote on
183 the matter that is the subject of the conversation; or

184 (B) the conversation pertains only to day-to-day management and operation of the
185 public transit district.

186 (c) "Meeting" does not mean the convening of a public body that has both legislative
187 and executive responsibilities if:

188 (i) no public funds are appropriated for expenditure during the time the public body is
189 convened; and

190 (ii) the public body is convened solely for the discussion or implementation of
191 administrative or operational matters:

192 (A) for which no formal action by the public body is required; or

193 (B) that would not come before the public body for discussion or action.

194 (7) "Monitor" means to hear or observe, live, by audio or video equipment, all of the
195 public statements of each member of the public body who is participating in a meeting.

196 (8) "Participate" means the ability to communicate with all of the members of a public
197 body, either verbally or electronically, so that each member of the public body can hear or
198 observe the communication.

199 (9) (a) "Public body" means:

200 (i) any administrative, advisory, executive, or legislative body of the state or its
201 political subdivisions that:

202 (A) is created by the Utah Constitution, statute, rule, ordinance, or resolution;

203 (B) consists of two or more persons;

204 (C) expends, disburses, or is supported in whole or in part by tax revenue; and

205 (D) is vested with the authority to make decisions regarding the public's business; or

206 (ii) any administrative, advisory, executive, or policymaking body of an association, as
207 that term is defined in Section [53G-7-1101](#), that:

208 (A) consists of two or more persons;

209 (B) expends, disburses, or is supported in whole or in part by dues paid by a public
210 school or whose employees participate in a benefit or program described in Title 49, Utah State
211 Retirement and Insurance Benefit Act; and

212 (C) is vested with authority to make decisions regarding the participation of a public
213 school or student in an interscholastic activity, as that term is defined in Section 53G-7-1101.

214 (b) "Public body" includes:

215 (i) an interlocal entity or joint or cooperative undertaking, as those terms are defined in
216 Section 11-13-103;

217 (ii) a governmental nonprofit corporation as that term is defined in Section 11-13a-102;

218 [and]

219 (iii) the Utah Independent Redistricting Commission[-]; and

220 (iv) a project entity, as that term is defined in Section 11-13-103.

221 (c) "Public body" does not include:

222 (i) a political party, a political group, or a political caucus;

223 (ii) a conference committee, a rules committee, or a sifting committee of the

224 Legislature;

225 (iii) a school community council or charter trust land council, as that term is defined in

226 Section 53G-7-1203;

227 (iv) a taxed interlocal entity, as that term is defined in Section 11-13-602, if the taxed
228 interlocal entity is not a project entity; or

229 (v) the following Legislative Management subcommittees, which are established in

230 Section 36-12-8, when meeting for the purpose of selecting or evaluating a candidate to

231 recommend for employment, except that the meeting in which a subcommittee votes to

232 recommend that a candidate be employed shall be subject to the provisions of this act:

233 (A) the Research and General Counsel Subcommittee;

234 (B) the Budget Subcommittee; and

235 (C) the Audit Subcommittee.

236 (10) "Public statement" means a statement made in the ordinary course of business of
237 the public body with the intent that all other members of the public body receive it.

238 (11) (a) "Quorum" means a simple majority of the membership of a public body, unless
239 otherwise defined by applicable law.

240 (b) "Quorum" does not include a meeting of two elected officials by themselves when
241 no action, either formal or informal, is taken.

242 (12) "Recording" means an audio, or an audio and video, record of the proceedings of a

243 meeting that can be used to review the proceedings of the meeting.

244 (13) "Specified body":

245 (a) means an administrative, advisory, executive, or legislative body that:

246 (i) is not a public body;

247 (ii) consists of three or more members; and

248 (iii) includes at least one member who is:

249 (A) a legislator; and

250 (B) officially appointed to the body by the president of the Senate, speaker of the

251 House of Representatives, or governor; and

252 (b) does not include a body listed in Subsection (9)(c)(ii) or (9)(c)(v).

253 (14) "Transmit" means to send, convey, or communicate an electronic message by
254 electronic means.

255 Section 4. Section **52-4-204** is amended to read:

256 **52-4-204. Closed meeting held upon vote of members -- Business -- Reasons for**
257 **meeting recorded.**

258 (1) A closed meeting may be held if:

259 (a) (i) a quorum is present;

260 (ii) the meeting is an open meeting for which notice has been given under Section
261 [52-4-202](#); and

262 (iii) (A) two-thirds of the members of the public body present at the open meeting vote
263 to approve closing the meeting;

264 (B) for a meeting that is required to be closed under Section [52-4-205](#), if a majority of
265 the members of the public body present at an open meeting vote to approve closing the
266 meeting;

267 (C) for an ethics committee of the Legislature that is conducting an open meeting for
268 the purpose of reviewing an ethics complaint, a majority of the members present vote to
269 approve closing the meeting for the purpose of seeking or obtaining legal advice on legal,
270 evidentiary, or procedural matters, or for conducting deliberations to reach a decision on the
271 complaint; [or]

272 (D) for the Political Subdivisions Ethics Review Commission established in Section
273 [63A-15-201](#) that is conducting an open meeting for the purpose of reviewing an ethics

274 complaint in accordance with Section 63A-15-701, a majority of the members present vote to
275 approve closing the meeting for the purpose of seeking or obtaining legal advice on legal,
276 evidentiary, or procedural matters, or for conducting deliberations to reach a decision on the
277 complaint; or

278 (E) for a project entity that is conducting an open meeting for the purposes of
279 determining the value of an asset or developing a strategy related to the sale or use of that asset;
280 or

281 (b) (i) for the Independent Legislative Ethics Commission, the closed meeting is
282 convened for the purpose of conducting business relating to the receipt or review of an ethics
283 complaint, provided that public notice of the closed meeting is given under Section 52-4-202,
284 with the agenda for the meeting stating that the meeting will be closed for the purpose of
285 "conducting business relating to the receipt or review of ethics complaints";

286 (ii) for the Political Subdivisions Ethics Review Commission established in Section
287 63A-15-201, the closed meeting is convened for the purpose of conducting business relating to
288 the preliminary review of an ethics complaint in accordance with Section 63A-15-602,
289 provided that public notice of the closed meeting is given under Section 52-4-202, with the
290 agenda for the meeting stating that the meeting will be closed for the purpose of "conducting
291 business relating to the review of ethics complaints"; or

292 (iii) for the Independent Executive Branch Ethics Commission created in Section
293 63A-14-202, the closed meeting is convened for the purpose of conducting business relating to
294 an ethics complaint, provided that public notice of the closed meeting is given under Section
295 52-4-202, with the agenda for the meeting stating that the meeting will be closed for the
296 purpose of "conducting business relating to an ethics complaint."

297 (2) A closed meeting is not allowed unless each matter discussed in the closed meeting
298 is permitted under Section 52-4-205.

299 (3) (a) An ordinance, resolution, rule, regulation, contract, or appointment may not be
300 approved at a closed meeting.

301 (b) (i) A public body may not take a vote in a closed meeting, except for a vote on a
302 motion to end the closed portion of the meeting and return to an open meeting.

303 (ii) A motion to end the closed portion of a meeting may be approved by a majority of
304 the public body members present at the meeting.

305 (4) The following information shall be publicly announced and entered on the minutes
306 of the open meeting at which the closed meeting was approved:

- 307 (a) the reason or reasons for holding the closed meeting;
- 308 (b) the location where the closed meeting will be held; and
- 309 (c) the vote by name, of each member of the public body, either for or against the
310 motion to hold the closed meeting.

311 (5) Except as provided in Subsection 52-4-205(2), nothing in this chapter shall be
312 construed to require any meeting to be closed to the public.

313 Section 5. Section 52-4-205 is amended to read:

314 **52-4-205. Purposes of closed meetings -- Certain issues prohibited in closed**
315 **meetings.**

316 (1) A closed meeting described under Section 52-4-204 may only be held for:

317 (a) except as provided in Subsection (3), discussion of the character, professional
318 competence, or physical or mental health of an individual;

319 (b) strategy sessions to discuss collective bargaining;

320 (c) strategy sessions to discuss pending or reasonably imminent litigation;

321 (d) strategy sessions to discuss the purchase, exchange, or lease of real property,
322 including any form of a water right or water shares, if public discussion of the transaction
323 would:

324 (i) disclose the appraisal or estimated value of the property under consideration; or

325 (ii) prevent the public body from completing the transaction on the best possible terms;

326 (e) strategy sessions to discuss the sale of real property, including any form of a water
327 right or water shares, if:

328 (i) public discussion of the transaction would:

329 (A) disclose the appraisal or estimated value of the property under consideration; or

330 (B) prevent the public body from completing the transaction on the best possible terms;

331 (ii) the public body previously gave public notice that the property would be offered for
332 sale; and

333 (iii) the terms of the sale are publicly disclosed before the public body approves the
334 sale;

335 (f) discussion regarding deployment of security personnel, devices, or systems;

336 (g) investigative proceedings regarding allegations of criminal misconduct;

337 (h) as relates to the Independent Legislative Ethics Commission, conducting business
338 relating to the receipt or review of ethics complaints;

339 (i) as relates to an ethics committee of the Legislature, a purpose permitted under
340 Subsection 52-4-204(1)(a)(iii)(C);

341 (j) as relates to the Independent Executive Branch Ethics Commission created in
342 Section 63A-14-202, conducting business relating to an ethics complaint;

343 (k) as relates to a county legislative body, discussing commercial information as
344 defined in Section 59-1-404;

345 (l) as relates to the Utah Higher Education Assistance Authority and its appointed
346 board of directors, discussing fiduciary or commercial information as defined in Section
347 53B-12-102;

348 (m) deliberations, not including any information gathering activities, of a public body
349 acting in the capacity of:

350 (i) an evaluation committee under Title 63G, Chapter 6a, Utah Procurement Code,
351 during the process of evaluating responses to a solicitation, as defined in Section 63G-6a-103;

352 (ii) a protest officer, defined in Section 63G-6a-103, during the process of making a
353 decision on a protest under Title 63G, Chapter 6a, Part 16, Protests; or

354 (iii) a procurement appeals panel under Title 63G, Chapter 6a, Utah Procurement
355 Code, during the process of deciding an appeal under Title 63G, Chapter 6a, Part 17,
356 Procurement Appeals Board;

357 (n) the purpose of considering information that is designated as a trade secret, as
358 defined in Section 13-24-2, if the public body's consideration of the information is necessary in
359 order to properly conduct a procurement under Title 63G, Chapter 6a, Utah Procurement Code;

360 (o) the purpose of discussing information provided to the public body during the
361 procurement process under Title 63G, Chapter 6a, Utah Procurement Code, if, at the time of
362 the meeting:

363 (i) the information may not, under Title 63G, Chapter 6a, Utah Procurement Code, be
364 disclosed to a member of the public or to a participant in the procurement process; and

365 (ii) the public body needs to review or discuss the information in order to properly
366 fulfill its role and responsibilities in the procurement process;

367 (p) as relates to the governing board of a governmental nonprofit corporation, as that
368 term is defined in Section 11-13a-102, the purpose of discussing information that is designated
369 as a trade secret, as that term is defined in Section 13-24-2, if:

370 (i) public knowledge of the discussion would reasonably be expected to result in injury
371 to the owner of the trade secret; and

372 (ii) discussion of the information is necessary for the governing board to properly
373 discharge the board's duties and conduct the board's business; or

374 (q) a purpose for which a meeting is required to be closed under Subsection (2).

375 (2) The following meetings shall be closed:

376 (a) a meeting of the Health and Human Services Interim Committee to review a report
377 described in Subsection 62A-16-301(1)(a), and the responses to the report described in
378 Subsections 62A-16-301(2) and (4);

379 (b) a meeting of the Child Welfare Legislative Oversight Panel to:

380 (i) review a report described in Subsection 62A-16-301(1)(a), and the responses to the
381 report described in Subsections 62A-16-301(2) and (4); or

382 (ii) review and discuss an individual case, as described in Subsection 62A-4a-207(5);

383 (c) a meeting of the Opioid and Overdose Fatality Review Committee, created in
384 Section 26-7-13, to review and discuss an individual case, as described in Subsection
385 26-7-13(10);

386 (d) a meeting of a conservation district as defined in Section 17D-3-102 for the
387 purpose of advising the Natural Resource Conservation Service of the United States
388 Department of Agriculture on a farm improvement project if the discussed information is
389 protected information under federal law;

390 (e) a meeting of the Compassionate Use Board established in Section 26-61a-105 for
391 the purpose of reviewing petitions for a medical cannabis card in accordance with Section
392 26-61a-105; [~~and~~]

393 (f) a meeting of the Colorado River Authority of Utah if:

394 (i) the purpose of the meeting is to discuss an interstate claim to the use of the water in
395 the Colorado River system; and

396 (ii) failing to close the meeting would:

397 (A) reveal the contents of a record classified as protected under Subsection

398 63G-2-305(82);

399 (B) reveal a legal strategy relating to the state's claim to the use of the water in the
400 Colorado River system;

401 (C) harm the ability of the Colorado River Authority of Utah or river commissioner to
402 negotiate the best terms and conditions regarding the use of water in the Colorado River
403 system; or

404 (D) give an advantage to another state or to the federal government in negotiations
405 regarding the use of water in the Colorado River system[-]; and

406 (g) a meeting of a project entity if the purpose of the meeting is:

407 (i) conducting a strategy session to discuss market conditions relevant to a business
408 decision regarding the value of a project entity asset if the terms of the business decision are
409 publicly disclosed before the decision is finalized and a public discussion would:

410 (A) disclose the appraisal or estimated value of the project entity asset under
411 consideration; or

412 (B) prevent the project entity from completing on the best possible terms a
413 contemplated transaction concerning the project entity asset; or

414 (ii) failing to close the meeting would prevent the project entity from getting the best
415 price on the market.

416 (3) In a closed meeting, a public body may not:

417 (a) interview a person applying to fill an elected position;

418 (b) discuss filling a midterm vacancy or temporary absence governed by Title 20A,
419 Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office;
420 or

421 (c) discuss the character, professional competence, or physical or mental health of the
422 person whose name was submitted for consideration to fill a midterm vacancy or temporary
423 absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and
424 Temporary Absence in Elected Office.

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

426 **63G-6a-103. Definitions.**

427 As used in this chapter:

428 (1) "Approved vendor" means a person who has been approved for inclusion on an

429 approved vendor list through the approved vendor list process.

430 (2) "Approved vendor list" means a list of approved vendors established under Section
431 63G-6a-507.

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

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

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

437 (6) "Board" means the Utah State Procurement Policy Board, created in Section
438 63G-6a-202.

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

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

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

446 (10) "Chief procurement officer" means the individual appointed under Section
447 63A-2-102.

448 (11) "Conducting procurement unit" means a procurement unit that conducts all
449 aspects of a procurement:

450 (a) except:

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

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

453 (b) including:

454 (i) preparing any solicitation document;

455 (ii) appointing an evaluation committee;

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

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

459 (v) negotiating the terms and conditions of a contract, subject to the issuing

460 procurement unit's approval; and

461 (vi) contract administration.

462 (12) "Conservation district" means the same as that term is defined in Section
463 17D-3-102.

464 (13) "Construction project":

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

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

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

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

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

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

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

479 (15) "Construction subcontractor":

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

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

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

486 (16) "Contract" means an agreement for a procurement.

487 (17) "Contract administration" means all functions, duties, and responsibilities
488 associated with managing, overseeing, and carrying out a contract between a procurement unit
489 and a contractor, including:

490 (a) implementing the contract;

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

493 (c) executing change orders;

494 (d) processing contract amendments;

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

496 (f) curing contract errors and deficiencies;

497 (g) terminating a contract;

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

499 (i) computing payments under the contract; and

500 (j) closing out a contract.

501 (18) "Contractor" means a person who is awarded a contract with a procurement unit.

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

503 (a) more than one procurement unit; or

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

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

508 (21) "Cost-plus-a-percentage-of-cost contract" means a contract under which the
509 contractor is paid a percentage of the total actual expenses or costs in addition to the
510 contractor's actual expenses or costs.

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

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

515 (24) "Definite quantity contract" means a fixed price contract that provides for a
516 specified amount of supplies over a specified period, with deliveries scheduled according to a
517 specified schedule.

518 (25) "Design professional" means:

519 (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects
520 Licensing Act;

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

522 under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing
523 Act; or

524 (c) an individual certified as a commercial interior designer under Title 58, Chapter 86,
525 State Certification of Commercial Interior Designers Act.

526 (26) "Design professional procurement process" means the procurement process
527 described in Part 15, Design Professional Services.

528 (27) "Design professional services" means:

529 (a) professional services within the scope of the practice of architecture as defined in
530 Section 58-3a-102;

531 (b) professional engineering as defined in Section 58-22-102;

532 (c) master planning and programming services; or

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

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

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

539 (30) "Educational procurement unit" means:

540 (a) a school district;

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

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

543 (d) the Utah Education and Telehealth Network;

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

545 (f) the State Board of Education.

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

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

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

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

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

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

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

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

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

564 (b) an adjustment is required by law.

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

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

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

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

573 (37) "Immaterial error":

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

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

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

578 (b) includes:

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

581 (ii) a typographical error;

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

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

- 584 (38) "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 (39) "Independent procurement unit" means:
- 590 (a) (i) a legislative procurement unit;
- 591 (ii) a judicial branch procurement unit;
- 592 (iii) an educational procurement unit;
- 593 (iv) a local government procurement unit;
- 594 (v) a conservation district;
- 595 (vi) a local building authority;
- 596 (vii) a local district;
- 597 (viii) a public corporation;
- 598 (ix) a special service district; or
- 599 (x) the Utah Communications Authority, established in Section [63H-7a-201](#);
- 600 (b) the building board or the facilities division, but only to the extent of the
- 601 procurement authority provided under Title 63A, Chapter 5b, Administration of State
- 602 Facilities;
- 603 (c) the attorney general, but only to the extent of the procurement authority provided
- 604 under Title 67, Chapter 5, Attorney General;
- 605 (d) the Department of Transportation, but only to the extent of the procurement
- 606 authority provided under Title 72, Transportation Code; or
- 607 (e) any other executive branch department, division, office, or entity that has statutory
- 608 procurement authority outside this chapter, but only to the extent of that statutory procurement
- 609 authority.
- 610 (40) "Invitation for bids":
- 611 (a) means a document used to solicit:
- 612 (i) bids to provide a procurement item to a procurement unit; or
- 613 (ii) quotes for a price of a procurement item to be provided to a procurement unit; and
- 614 (b) includes all documents attached to or incorporated by reference in a document

615 described in Subsection (40)(a).

616 (41) "Issuing procurement unit" means a procurement unit that:

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

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

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

620 (42) "Judicial procurement unit" means:

621 (a) the Utah Supreme Court;

622 (b) the Utah Court of Appeals;

623 (c) the Judicial Council;

624 (d) a state judicial district; or

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

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

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

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

631 (44) "Legislative procurement unit" means:

632 (a) the Legislature;

633 (b) the Senate;

634 (c) the House of Representatives;

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

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

637 (i) within the state legislative branch; or

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

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

640 (C) for which the Office of Legislative Research and General Counsel provides staff
641 support.

642 (45) "Local building authority" means the same as that term is defined in Section
643 [17D-2-102](#).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

674 (57) "Procurement official" means:

675 (a) for a procurement unit other than an independent procurement unit, the chief
676 procurement officer;

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

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

681 (d) for a local government procurement unit:

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

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

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

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

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

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

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

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

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

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

700 (m) for the State Board of Education, the State Board of Education or the State Board
701 of Education's designee;

702 (n) for the Utah Board of Higher Education, the Commissioner of Higher Education or
703 the designee of the Commissioner of Higher Education;

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

707 (p) (i) for the building board, and only to the extent of procurement activities of the

708 building board as an independent procurement unit under the procurement authority provided
709 under Title 63A, Chapter 5b, Administration of State Facilities, the director of the building
710 board or the director's designee;

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

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

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

724 (v) for any other executive branch department, division, office, or entity that has
725 statutory procurement authority outside this chapter, and only to the extent of the procurement
726 activities of the department, division, office, or entity as an independent procurement unit
727 under the procurement authority provided outside this chapter for the department, division,
728 office, or entity, the chief executive officer of the department, division, office, or entity or the
729 chief executive officer's designee.

730 (58) "Procurement unit":

731 (a) means:

732 (i) a legislative procurement unit;

733 (ii) an executive branch procurement unit;

734 (iii) a judicial procurement unit;

735 (iv) an educational procurement unit;

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

737 (vi) a local government procurement unit;

738 (vii) a local district;

739 (viii) a special service district;
740 (ix) a local building authority;
741 (x) a conservation district;
742 (xi) a public corporation; and
743 (xii) a project entity, as that term is defined in Section [11-13-301](#); and
744 (b) except for a project entity, as described in Subsection (58)(a), does not include a
745 political subdivision created under Title 11, Chapter 13, Interlocal Cooperation Act.

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

- 748 (a) accounting;
- 749 (b) administrative law judge service;
- 750 (c) architecture;
- 751 (d) construction design and management;
- 752 (e) engineering;
- 753 (f) financial services;
- 754 (g) information technology;
- 755 (h) the law;
- 756 (i) medicine;
- 757 (j) psychiatry; or
- 758 (k) underwriting.

759 (60) "Protest officer" means:

- 760 (a) for the division or an independent procurement unit:
 - 761 (i) the procurement official;
 - 762 (ii) the procurement official's designee who is an employee of the procurement unit; or
 - 763 (iii) a person designated by rule made by the rulemaking authority; or
- 764 (b) for a procurement unit other than an independent procurement unit, the chief
765 procurement officer or the chief procurement officer's designee who is an employee of the
766 division.

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

768 (62) "Public entity" means the state or any other government entity within the state that
769 expends public funds.

770 (63) "Public facility" means a building, structure, infrastructure, improvement, or other
771 facility of a public entity.

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

774 (65) "Public transit district" means a public transit district organized under Title 17B,
775 Chapter 2a, Part 8, Public Transit District Act.

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

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

782 (a) is responsible; and

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

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

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

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

793 (71) "Request for proposals process" means the procurement process described in Part
794 7, Request for Proposals.

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

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

800 (a) under which a contractor agrees to provide a procurement unit's entire requirements

801 for certain procurement items at prices specified in the contract during the contract period; and

802 (b) that:

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

804 (ii) provides a maximum purchase limit.

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

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

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

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

811 (76) "Rule" includes a policy or regulation adopted by the rulemaking authority, if
812 adopting a policy or regulation is the method the rulemaking authority uses to adopt provisions
813 that govern the applicable procurement unit.

814 (77) "Rulemaking authority" means:

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

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

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

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

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

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

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

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

827 (d) for a local government procurement unit:

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

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

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

- 832 (f) for a state institution of higher education, the Utah Board of Higher Education;
- 833 (g) for the State Board of Education or the Utah Schools for the Deaf and the Blind, the
834 State Board of Education;
- 835 (h) for a public transit district, the chief executive of the public transit district;
- 836 (i) for a local district other than a public transit district or for a special service district,
837 the board, except to the extent that the board of trustees of the local district or the governing
838 body of the special service district makes its own rules:
- 839 (i) with respect to a subject addressed by board rules; or
- 840 (ii) that are in addition to board rules;
- 841 (j) for the Utah Educational Savings Plan, created in Section 53B-8a-103, the Utah
842 Board of Higher Education;
- 843 (k) for the School and Institutional Trust Lands Administration, created in Section
844 53C-1-201, the School and Institutional Trust Lands Board of Trustees;
- 845 (l) for the School and Institutional Trust Fund Office, created in Section 53D-1-201,
846 the School and Institutional Trust Fund Board of Trustees;
- 847 (m) for the Utah Communications Authority, established in Section 63H-7a-201, the
848 Utah Communications Authority board, created in Section 63H-7a-203; or
- 849 (n) for any other procurement unit, the board.
- 850 (78) "Service":
- 851 (a) means labor, effort, or work to produce a result that is beneficial to a procurement
852 unit;
- 853 (b) includes a professional service; and
- 854 (c) does not include labor, effort, or work provided under an employment agreement or
855 a collective bargaining agreement.
- 856 (79) "Small purchase process" means the procurement process described in Section
857 63G-6a-506.
- 858 (80) "Sole source contract" means a contract resulting from a sole source procurement.
- 859 (81) "Sole source procurement" means a procurement without competition pursuant to
860 a determination under Subsection 63G-6a-802(1)(a) that there is only one source for the
861 procurement item.
- 862 (82) "Solicitation" means an invitation for bids, request for proposals, or request for

863 statement of qualifications.

864 (83) "Solicitation response" means:

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

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

867 (c) a statement of qualifications submitted in response to a request for statement of
868 qualifications.

869 (84) "Special service district" means the same as that term is defined in Section
870 17D-1-102.

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

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

875 (b) preparing a procurement item for delivery.

876 (86) "Standard procurement process" means:

877 (a) the bidding process;

878 (b) the request for proposals process;

879 (c) the approved vendor list process;

880 (d) the small purchase process; or

881 (e) the design professional procurement process.

882 (87) "State cooperative contract" means a contract awarded by the division for and in
883 behalf of all public entities.

884 (88) "Statement of qualifications" means a written statement submitted to a
885 procurement unit in response to a request for statement of qualifications.

886 (89) "Subcontractor":

887 (a) means a person under contract to perform part of a contractual obligation under the
888 control of the contractor, whether the person's contract is with the contractor directly or with
889 another person who is under contract to perform part of a contractual obligation under the
890 control of the contractor; and

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

893 (90) "Technology" means the same as "information technology," as defined in Section

894 63A-16-102.

895 (91) "Tie bid" means that the lowest responsive bids of responsible bidders are
896 identical in price.

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

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

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

900 (c) an additional amount, expressly described in the contract, to cover overhead and
901 profit, that is not based on a percentage of the cost to the contractor.

902 (93) "Transitional costs":

903 (a) means the costs of changing:

904 (i) from an existing provider of a procurement item to another provider of that
905 procurement item; or

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

907 (b) includes:

908 (i) training costs;

909 (ii) conversion costs;

910 (iii) compatibility costs;

911 (iv) costs associated with system downtime;

912 (v) disruption of service costs;

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

914 (vii) installation costs; and

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

916 (c) does not include:

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

918 (ii) contract negotiation or drafting costs.

919 (94) "Vendor":

920 (a) means a person who is seeking to enter into a contract with a procurement unit to
921 provide a procurement item; and

922 (b) includes:

923 (i) a bidder;

924 (ii) an offeror;

- 925 (iii) an approved vendor;
- 926 (iv) a design professional; and
- 927 (v) a person who submits an unsolicited proposal under Section [63G-6a-712](#).

928 Section 7. Section **63G-6a-107.5** is enacted to read:

929 **63G-6a-107.5. Application of chapter to project entities.**

930 (1) As used in this Section, "project entity" means the same as that term is defined in
931 Section [11-13-103](#).

932 (2) This chapter applies to a project entity as described in Subsections [11-13-316\(3\)](#)
933 and (4).

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

- 935 (a) Part 10, Preferences;
- 936 (b) the policies described in Section [63G-6a-102](#); and
- 937 (c) any rules that the project entity adopts under this chapter.