

**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

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**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 unless the governing board of the project entity policies for procurement that enable the project  
49 entity to efficiently fulfill the project entity's responsibilities under the project entity's  
50 organization agreement.

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

53 (a) the project entity is a local government procurement unit, as defined in Section  
54 [63G-6a-103](#); and

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

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

57 Act.

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

59 **11-13-603. Taxed interlocal entity.**

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

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

65 (b) a taxed interlocal entity's use of an asset that was a public asset before the taxed  
66 interlocal entity's use of the asset does not constitute a taxed interlocal entity's use of a public  
67 asset;

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

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

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

73 (b) A project entity is subject to the provisions of Title 63G, Chapter 6a, Utah  
74 Procurement Code to the extent described in Section [11-13-316](#).

75 (3) (a) A taxed interlocal entity is not a participating local entity as defined in Section  
76 [67-3-12](#).

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

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

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

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

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

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

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

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

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

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

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

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

108 (a) Part 4, Governance;

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

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

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

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

113 (f) Section 11-13-225;

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

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

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

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

121 (7) (a) A governmental law enacted after May 12, 2015, and on or before November  
122 10, 2021, is not applicable to, is not binding upon, and does not have effect on a taxed  
123 interlocal entity that is a project entity unless the governmental law expressly states the section  
124 of governmental law to be applicable to and binding upon the taxed interlocal entity with the  
125 following words: "[Applicable section or subsection number] constitutes an exception to  
126 Subsection 11-13-603(7)(a) and is applicable to and binding upon a taxed interlocal entity."

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

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

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

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

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

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

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

145 **52-4-103. Definitions.**

146 As used in this chapter:

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

148 (a) an electronic meeting originates; or

149 (b) the participants are connected.

150 (2) "Capitol hill complex" means the grounds and buildings within the area bounded by  
151 300 North Street, Columbus Street, 500 North Street, and East Capitol Boulevard in Salt Lake  
152 City.

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

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

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

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

163 (a) electronic mail;

164 (b) instant messaging;

165 (c) electronic chat;

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

167 (e) any other method that conveys a message or facilitates communication  
168 electronically.

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

174 (b) "Meeting" does not mean:

175 (i) a chance gathering or social gathering;

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

178 (iii) a convening of a three-member board of trustees of a large public transit district as  
179 defined in Section 17B-2a-802 if:

180 (A) the board members do not, during the conversation, take a tentative or final vote on

181 the matter that is the subject of the conversation; or

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

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

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

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

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

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

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

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

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

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

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

201 (B) consists of two or more persons;

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

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

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

206 (A) consists of two or more persons;

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

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

- 212 (b) "Public body" includes:
- 213 (i) an interlocal entity or joint or cooperative undertaking, as those terms are defined in
- 214 Section [11-13-103](#);
- 215 (ii) a governmental nonprofit corporation as that term is defined in Section [11-13a-102](#);
- 216 [~~and~~]
- 217 (iii) the Utah Independent Redistricting Commission[~~;~~]; and
- 218 (iv) a project entity, as that term is defined in Section [11-13-103](#).
- 219 (c) "Public body" does not include:
- 220 (i) a political party, a political group, or a political caucus;
- 221 (ii) a conference committee, a rules committee, or a sifting committee of the
- 222 Legislature;
- 223 (iii) a school community council or charter trust land council, as that term is defined in
- 224 Section [53G-7-1203](#);
- 225 (iv) a taxed interlocal entity, as that term is defined in Section [11-13-602](#), if the taxed
- 226 interlocal entity is not a project entity; or
- 227 (v) the following Legislative Management subcommittees, which are established in
- 228 Section [36-12-8](#), when meeting for the purpose of selecting or evaluating a candidate to
- 229 recommend for employment, except that the meeting in which a subcommittee votes to
- 230 recommend that a candidate be employed shall be subject to the provisions of this act:
- 231 (A) the Research and General Counsel Subcommittee;
- 232 (B) the Budget Subcommittee; and
- 233 (C) the Audit Subcommittee.
- 234 (10) "Public statement" means a statement made in the ordinary course of business of
- 235 the public body with the intent that all other members of the public body receive it.
- 236 (11) (a) "Quorum" means a simple majority of the membership of a public body, unless
- 237 otherwise defined by applicable law.
- 238 (b) "Quorum" does not include a meeting of two elected officials by themselves when
- 239 no action, either formal or informal, is taken.
- 240 (12) "Recording" means an audio, or an audio and video, record of the proceedings of a
- 241 meeting that can be used to review the proceedings of the meeting.
- 242 (13) "Specified body":



- 243 (a) means an administrative, advisory, executive, or legislative body that:
- 244 (i) is not a public body;
- 245 (ii) consists of three or more members; and
- 246 (iii) includes at least one member who is:
- 247 (A) a legislator; and
- 248 (B) officially appointed to the body by the president of the Senate, speaker of the
- 249 House of Representatives, or governor; and
- 250 (b) does not include a body listed in Subsection (9)(c)(ii) or (9)(c)(v).

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

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

254 **52-4-204. Closed meeting held upon vote of members -- Business -- Reasons for**  
255 **meeting recorded.**

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

- 257 (a) (i) a quorum is present;
- 258 (ii) the meeting is an open meeting for which notice has been given under Section
- 259 [52-4-202](#); and

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

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

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

270 (D) for the Political Subdivisions Ethics Review Commission established in Section  
271 [63A-15-201](#) that is conducting an open meeting for the purpose of reviewing an ethics  
272 complaint in accordance with Section [63A-15-701](#), a majority of the members present vote to  
273 approve closing the meeting for the purpose of seeking or obtaining legal advice on legal,

274 evidentiary, or procedural matters, or for conducting deliberations to reach a decision on the  
275 complaint; or

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

278 or

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

284 (ii) for the Political Subdivisions Ethics Review Commission established in Section  
285 63A-15-201, the closed meeting is convened for the purpose of conducting business relating to  
286 the preliminary review of an ethics complaint in accordance with Section 63A-15-602,  
287 provided that public notice of the closed meeting is given under Section 52-4-202, with the  
288 agenda for the meeting stating that the meeting will be closed for the purpose of "conducting  
289 business relating to the review of ethics complaints"; or

290 (iii) for the Independent Executive Branch Ethics Commission created in Section  
291 63A-14-202, the closed meeting is convened for the purpose of conducting business relating to  
292 an ethics complaint, provided that public notice of the closed meeting is given under Section  
293 52-4-202, with the agenda for the meeting stating that the meeting will be closed for the  
294 purpose of "conducting business relating to an ethics complaint."

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

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

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

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

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

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

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

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

312 **52-4-205. Purposes of closed meetings -- Certain issues prohibited in closed**  
313 **meetings.**

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

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

317 (b) strategy sessions to discuss collective bargaining;

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

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

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

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

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

326 (i) public discussion of the transaction would:

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

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

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

331 (iii) the terms of the sale are publicly disclosed before the public body approves the  
332 sale;

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

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

335 (h) as relates to the Independent Legislative Ethics Commission, conducting business

336 relating to the receipt or review of ethics complaints;

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

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

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

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

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

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

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

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

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

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

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

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

365 (p) as relates to the governing board of a governmental nonprofit corporation, as that  
366 term is defined in Section 11-13a-102, the purpose of discussing information that is designated

367 as a trade secret, as that term is defined in Section 13-24-2, if:

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

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

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

373 (2) The following meetings shall be closed:

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

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

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

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

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

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

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

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

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

394 (ii) failing to close the meeting would:

395 (A) reveal the contents of a record classified as protected under Subsection  
396 63G-2-305(82);

397 (B) reveal a legal strategy relating to the state's claim to the use of the water in the

398 Colorado River system;

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

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

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

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

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

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

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

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

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

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

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

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

424 **63G-6a-103. Definitions.**

425 As used in this chapter:

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

428 (2) "Approved vendor list" means a list of approved vendors established under Section

429 63G-6a-507.

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

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

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

435 (6) "Board" means the Utah State Procurement Policy Board, created in Section  
436 63G-6a-202.

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

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

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

444 (10) "Chief procurement officer" means the individual appointed under Section  
445 63A-2-102.

446 (11) "Conducting procurement unit" means a procurement unit that conducts all  
447 aspects of a procurement:

448 (a) except:

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

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

451 (b) including:

452 (i) preparing any solicitation document;

453 (ii) appointing an evaluation committee;

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

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

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

459 (vi) contract administration.

460 (12) "Conservation district" means the same as that term is defined in Section  
461 17D-3-102.

462 (13) "Construction project":

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

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

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

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

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

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

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

477 (15) "Construction subcontractor":

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

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

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

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

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

488 (a) implementing the contract;

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



- 491 (c) executing change orders;
- 492 (d) processing contract amendments;
- 493 (e) resolving, to the extent practicable, contract disputes;
- 494 (f) curing contract errors and deficiencies;
- 495 (g) terminating a contract;
- 496 (h) measuring or evaluating completed work and contractor performance;
- 497 (i) computing payments under the contract; and
- 498 (j) closing out a contract.
- 499 (18) "Contractor" means a person who is awarded a contract with a procurement unit.
- 500 (19) "Cooperative procurement" means procurement conducted by, or on behalf of:
  - 501 (a) more than one procurement unit; or
  - 502 (b) a procurement unit and a cooperative purchasing organization.
- 503 (20) "Cooperative purchasing organization" means an organization, association, or
- 504 alliance of purchasers established to combine purchasing power in order to obtain the best
- 505 value for the purchasers by engaging in procurements in accordance with Section [63G-6a-2105](#).
- 506 (21) "Cost-plus-a-percentage-of-cost contract" means a contract under which the
- 507 contractor is paid a percentage of the total actual expenses or costs in addition to the
- 508 contractor's actual expenses or costs.
- 509 (22) "Cost-reimbursement contract" means a contract under which a contractor is
- 510 reimbursed for costs which are allowed and allocated in accordance with the contract terms and
- 511 the provisions of this chapter, and a fee, if any.
- 512 (23) "Days" means calendar days, unless expressly provided otherwise.
- 513 (24) "Definite quantity contract" means a fixed price contract that provides for a
- 514 specified amount of supplies over a specified period, with deliveries scheduled according to a
- 515 specified schedule.
- 516 (25) "Design professional" means:
  - 517 (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects
  - 518 Licensing Act;
  - 519 (b) an individual licensed as a professional engineer or professional land surveyor
  - 520 under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing
  - 521 Act; or

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

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

526 (27) "Design professional services" means:

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

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

530 (c) master planning and programming services; or

531 (d) services within the scope of the practice of commercial interior design, as defined  
532 in Section [58-86-102](#).

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

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

537 (30) "Educational procurement unit" means:

538 (a) a school district;

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

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

541 (d) the Utah Education and Telehealth Network;

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

543 (f) the State Board of Education.

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

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

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

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

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

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

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

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

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

562 (b) an adjustment is required by law.

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

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

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

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

571 (37) "Immaterial error":

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

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

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

576 (b) includes:

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

579 (ii) a typographical error;

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

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

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

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

584 procurement unit; and

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

586 (ii) provides a maximum purchase limit.

587 (39) "Independent procurement unit" means:

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

589 (ii) a judicial branch procurement unit;

590 (iii) an educational procurement unit;

591 (iv) a local government procurement unit;

592 (v) a conservation district;

593 (vi) a local building authority;

594 (vii) a local district;

595 (viii) a public corporation;

596 (ix) a special service district; or

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

598 (b) the building board or the facilities division, but only to the extent of the

599 procurement authority provided under Title 63A, Chapter 5b, Administration of State

600 Facilities;

601 (c) the attorney general, but only to the extent of the procurement authority provided

602 under Title 67, Chapter 5, Attorney General;

603 (d) the Department of Transportation, but only to the extent of the procurement

604 authority provided under Title 72, Transportation Code; or

605 (e) any other executive branch department, division, office, or entity that has statutory

606 procurement authority outside this chapter, but only to the extent of that statutory procurement

607 authority.

608 (40) "Invitation for bids":

609 (a) means a document used to solicit:

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

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

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

613 described in Subsection (40)(a).

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

- 615 (a) reviews a solicitation to verify that it is in proper form;
- 616 (b) causes the notice of a solicitation to be published; and
- 617 (c) negotiates and approves the terms and conditions of a contract.

618 (42) "Judicial procurement unit" means:

- 619 (a) the Utah Supreme Court;
- 620 (b) the Utah Court of Appeals;
- 621 (c) the Judicial Council;
- 622 (d) a state judicial district; or
- 623 (e) an office, committee, subcommittee, or other organization within the state judicial
- 624 branch.

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

- 626 (a) the supplies and materials are not provided by, or through, the contractor; and
- 627 (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and
- 628 profit for a specified number of labor hours or days.

629 (44) "Legislative procurement unit" means:

- 630 (a) the Legislature;
- 631 (b) the Senate;
- 632 (c) the House of Representatives;
- 633 (d) a staff office of the Legislature, the Senate, or the House of Representatives; or
- 634 (e) a committee, subcommittee, commission, or other organization:
  - 635 (i) within the state legislative branch; or
  - 636 (ii) (A) that is created by statute to advise or make recommendations to the Legislature;
  - 637 (B) the membership of which includes legislators; and
  - 638 (C) for which the Office of Legislative Research and General Counsel provides staff
  - 639 support.

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

641 [17D-2-102](#).

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

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

644 [~~(a) a county or municipality, and each office or agency of the county or municipality,~~

645 ~~unless the county or municipality adopts its own procurement code by ordinance;]~~

646 ~~[(b) a county or municipality that has adopted this entire chapter by ordinance, and~~  
647 ~~each office or agency of that county or municipality; or]~~

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

651 (a) a county, municipality, or project entity, and each office of the county, municipality,  
652 or project entity, unless:

653 (i) the county or municipality adopts a procurement code by ordinance; or

654 (ii) the project entity adopts a procurement code through the process described in  
655 Section [11-13-316](#);

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

658 (ii) a project entity that has adopted this entire chapter through the process described in  
659 Subsection [11-13-16](#); or

660 (c) a county, municipality, or project entity, and each office of the county, municipality,  
661 or project entity that has adopted a portion of this chapter to the extent that:

662 (i) a term in the ordinance is used in the adopted chapter; or

663 (ii) a term in the ordinance is used in the language a project entity adopts in its  
664 procurement code through the process described in Section [11-13-316](#).

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

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

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

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

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

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

676 (52) "Offeror" means a person who submits a proposal in response to a request for

677 proposals.

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

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

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

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

686 (57) "Procurement official" means:

687 (a) for a procurement unit other than an independent procurement unit, the chief  
688 procurement officer;

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

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

693 (d) for a local government procurement unit:

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

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

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

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

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

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

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

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

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

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

712 (m) for the State Board of Education, the State Board of Education or the State Board  
713 of Education's designee;

714 (n) for the Utah Board of Higher Education, the Commissioner of Higher Education or  
715 the designee of the Commissioner of Higher Education;

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

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

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

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

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

736 (v) for any other executive branch department, division, office, or entity that has  
737 statutory procurement authority outside this chapter, and only to the extent of the procurement  
738 activities of the department, division, office, or entity as an independent procurement unit



739 under the procurement authority provided outside this chapter for the department, division,  
740 office, or entity, the chief executive officer of the department, division, office, or entity or the  
741 chief executive officer's designee.

742 (58) "Procurement unit":

743 (a) means:

744 (i) a legislative procurement unit;

745 (ii) an executive branch procurement unit;

746 (iii) a judicial procurement unit;

747 (iv) an educational procurement unit;

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

749 (vi) a local government procurement unit;

750 (vii) a local district;

751 (viii) a special service district;

752 (ix) a local building authority;

753 (x) a conservation district; and

754 (xi) a public corporation; and

755 (b) except for a project entity, to the extent that a project entity is subject to this chapter  
756 as described in Section [11-13-316](#), does not include a political subdivision created under Title

757 11, Chapter 13, Interlocal Cooperation Act.

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

760 (a) accounting;

761 (b) administrative law judge service;

762 (c) architecture;

763 (d) construction design and management;

764 (e) engineering;

765 (f) financial services;

766 (g) information technology;

767 (h) the law;

768 (i) medicine;

769 (j) psychiatry; or

770 (k) underwriting.

771 (60) "Protest officer" means:

772 (a) for the division or an independent procurement unit:

773 (i) the procurement official;

774 (ii) the procurement official's designee who is an employee of the procurement unit; or

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

776 (b) for a procurement unit other than an independent procurement unit, the chief

777 procurement officer or the chief procurement officer's designee who is an employee of the

778 division.

779 (61) "Project entity" means the same as that term is defined in Section 11-13-103.

780 ~~[(61)]~~ (62) "Public corporation" means the same as that term is defined in Section

781 63E-1-102.

782 ~~[(62)]~~ (63) "Public entity" means the state or any other government entity within the

783 state that expends public funds.

784 ~~[(63)]~~ (64) "Public facility" means a building, structure, infrastructure, improvement,

785 or other facility of a public entity.

786 ~~[(64)]~~ (65) "Public funds" means money, regardless of its source, including from the

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

788 ~~[(65)]~~ (66) "Public transit district" means a public transit district organized under Title

789 17B, Chapter 2a, Part 8, Public Transit District Act.

790 ~~[(66)]~~ (67) "Public-private partnership" means an arrangement or agreement, occurring

791 on or after January 1, 2017, between a procurement unit and one or more contractors to provide

792 for a public need through the development or operation of a project in which the contractor or

793 contractors share with the procurement unit the responsibility or risk of developing, owning,

794 maintaining, financing, or operating the project.

795 ~~[(67)]~~ (68) "Qualified vendor" means a vendor who:

796 (a) is responsible; and

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

798 meets the minimum mandatory requirements, evaluation criteria, and any applicable score

799 thresholds set forth in the request for statement of qualifications.

800 ~~[(68)]~~ (69) "Real property" means land and any building, fixture, improvement,

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

802 ~~[(69)]~~ (70) "Request for information" means a nonbinding process through which a  
803 procurement unit requests information relating to a procurement item.

804 ~~[(70)]~~ (71) "Request for proposals" means a document used to solicit proposals to  
805 provide a procurement item to a procurement unit, including all other documents that are  
806 attached to that document or incorporated in that document by reference.

807 ~~[(71)]~~ (72) "Request for proposals process" means the procurement process described  
808 in Part 7, Request for Proposals.

809 ~~[(72)]~~ (73) "Request for statement of qualifications" means a document used to solicit  
810 information about the qualifications of a person interested in responding to a potential  
811 procurement, including all other documents attached to that document or incorporated in that  
812 document by reference.

813 ~~[(73)]~~ (74) "Requirements contract" means a contract:

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

816 (b) that:

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

818 (ii) provides a maximum purchase limit.

819 ~~[(74)]~~ (75) "Responsible" means being capable, in all respects, of:

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

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

823 ~~[(75)]~~ (76) "Responsive" means conforming in all material respects to the requirements  
824 of a solicitation.

825 ~~[(76)]~~ (77) "Rule" includes a policy or regulation adopted by the rulemaking authority,  
826 if adopting a policy or regulation is the method the rulemaking authority uses to adopt  
827 provisions that govern the applicable procurement unit.

828 ~~[(77)]~~ (78) "Rulemaking authority" means:

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

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

831 (c) (i) only to the extent of the procurement authority expressly granted to the

832 procurement unit by statute:

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

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

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

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

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

841 (d) for a local government procurement unit:

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

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

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

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

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

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

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

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

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

855 (j) for the Utah Educational Savings Plan, created in Section 53B-8a-103, the Utah  
856 Board of Higher Education;

857 (k) for the School and Institutional Trust Lands Administration, created in Section  
858 53C-1-201, the School and Institutional Trust Lands Board of Trustees;

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

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

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

864 [~~(78)~~] (79) "Service":

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

867 (b) includes a professional service; and

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

870 [~~(79)~~] (80) "Small purchase process" means the procurement process described in  
871 Section [63G-6a-506](#).

872 [~~(80)~~] (81) "Sole source contract" means a contract resulting from a sole source  
873 procurement.

874 [~~(81)~~] (82) "Sole source procurement" means a procurement without competition  
875 pursuant to a determination under Subsection [63G-6a-802\(1\)\(a\)](#) that there is only one source  
876 for the procurement item.

877 [~~(82)~~] (83) "Solicitation" means an invitation for bids, request for proposals, or request  
878 for statement of qualifications.

879 [~~(83)~~] (84) "Solicitation response" means:

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

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

882 (c) a statement of qualifications submitted in response to a request for statement of  
883 qualifications.

884 [~~(84)~~] (85) "Special service district" means the same as that term is defined in Section  
885 [17D-1-102](#).

886 [~~(85)~~] (86) "Specification" means any description of the physical or functional  
887 characteristics or of the nature of a procurement item included in an invitation for bids or a  
888 request for proposals, or otherwise specified or agreed to by a procurement unit, including a  
889 description of:

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

891 (b) preparing a procurement item for delivery.

892 [~~(86)~~] (87) "Standard procurement process" means:

893 (a) the bidding process;

894 (b) the request for proposals process;

895 (c) the approved vendor list process;

896 (d) the small purchase process; or

897 (e) the design professional procurement process.

898 [~~87~~] (88) "State cooperative contract" means a contract awarded by the division for  
899 and in behalf of all public entities.

900 [~~88~~] (89) "Statement of qualifications" means a written statement submitted to a  
901 procurement unit in response to a request for statement of qualifications.

902 [~~89~~] (90) "Subcontractor":

903 (a) means a person under contract to perform part of a contractual obligation under the  
904 control of the contractor, whether the person's contract is with the contractor directly or with  
905 another person who is under contract to perform part of a contractual obligation under the  
906 control of the contractor; and

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

909 [~~90~~] (91) "Technology" means the same as "information technology," as defined in  
910 Section 63A-16-102.

911 [~~91~~] (92) "Tie bid" means that the lowest responsive bids of responsible bidders are  
912 identical in price.

913 [~~92~~] (93) "Time and materials contract" means a contract under which the contractor  
914 is paid:

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

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

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

919 [~~93~~] (94) "Transitional costs":

920 (a) means the costs of changing:

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

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

924 (b) includes:

- 925 (i) training costs;
- 926 (ii) conversion costs;
- 927 (iii) compatibility costs;
- 928 (iv) costs associated with system downtime;
- 929 (v) disruption of service costs;
- 930 (vi) staff time necessary to implement the change;
- 931 (vii) installation costs; and
- 932 (viii) ancillary software, hardware, equipment, or construction costs; and
- 933 (c) does not include:
  - 934 (i) the costs of preparing for or engaging in a procurement process; or
  - 935 (ii) contract negotiation or drafting costs.
- 936 [~~94~~] (95) "Vendor":
  - 937 (a) means a person who is seeking to enter into a contract with a procurement unit to
  - 938 provide a procurement item; and
  - 939 (b) includes:
    - 940 (i) a bidder;
    - 941 (ii) an offeror;
    - 942 (iii) an approved vendor;
    - 943 (iv) a design professional; and
    - 944 (v) a person who submits an unsolicited proposal under Section [63G-6a-712](#).
- 945 Section 7. Section **63G-6a-107.5** is enacted to read:
  - 946 **63G-6a-107.5. Application of chapter to project entities.**
  - 947 This chapter applies to a project entity to the extent described in Section [11-13-316](#).