

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 unless the governing board of the project entity adopts policies for procurement that enable the
49 project 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, developing a strategy related to the sale or use of that asset;

278 (F) for a project entity that is conducting an open meeting for purposes of discussing a
279 business decision, the disclosure of which could cause commercial injury to, or confer a
280 competitive advantage upon a potential or actual competitor of, the project entity; or

281 (G) for a project entity that is conducting an open meeting for purposes of discussing a
282 record, the disclosure of which could cause commercial injury to, or confer a competitive
283 advantage upon a potential competitor of, the project entity; or

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

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

295 (iii) for the Independent Executive Branch Ethics Commission created in Section
296 63A-14-202, the closed meeting is convened for the purpose of conducting business relating to
297 an ethics complaint, provided that public notice of the closed meeting is given under Section
298 52-4-202, with the agenda for the meeting stating that the meeting will be closed for the
299 purpose of "conducting business relating to an ethics complaint."

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

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

304 (b) (i) A public body may not take a vote in a closed meeting, except for a vote on a

305 motion to end the closed portion of the meeting and return to an open meeting.

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

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

310 (a) the reason or reasons for holding the closed meeting;

311 (b) the location where the closed meeting will be held; and

312 (c) the vote by name, of each member of the public body, either for or against the
313 motion to hold the closed meeting.

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

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

317 **52-4-205. Purposes of closed meetings -- Certain issues prohibited in closed**
318 **meetings.**

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

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

322 (b) strategy sessions to discuss collective bargaining;

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

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

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

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

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

331 (i) public discussion of the transaction would:

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

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

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

- 336 (iii) the terms of the sale are publicly disclosed before the public body approves the
337 sale;
- 338 (f) discussion regarding deployment of security personnel, devices, or systems;
- 339 (g) investigative proceedings regarding allegations of criminal misconduct;
- 340 (h) as relates to the Independent Legislative Ethics Commission, conducting business
341 relating to the receipt or review of ethics complaints;
- 342 (i) as relates to an ethics committee of the Legislature, a purpose permitted under
343 Subsection [52-4-204\(1\)\(a\)\(iii\)\(C\)](#);
- 344 (j) as relates to the Independent Executive Branch Ethics Commission created in
345 Section [63A-14-202](#), conducting business relating to an ethics complaint;
- 346 (k) as relates to a county legislative body, discussing commercial information as
347 defined in Section [59-1-404](#);
- 348 (l) as relates to the Utah Higher Education Assistance Authority and its appointed
349 board of directors, discussing fiduciary or commercial information as defined in Section
350 [53B-12-102](#);
- 351 (m) deliberations, not including any information gathering activities, of a public body
352 acting in the capacity of:
 - 353 (i) an evaluation committee under Title 63G, Chapter 6a, Utah Procurement Code,
354 during the process of evaluating responses to a solicitation, as defined in Section [63G-6a-103](#);
 - 355 (ii) a protest officer, defined in Section [63G-6a-103](#), during the process of making a
356 decision on a protest under Title 63G, Chapter 6a, Part 16, Protests; or
 - 357 (iii) a procurement appeals panel under Title 63G, Chapter 6a, Utah Procurement
358 Code, during the process of deciding an appeal under Title 63G, Chapter 6a, Part 17,
359 Procurement Appeals Board;
- 360 (n) the purpose of considering information that is designated as a trade secret, as
361 defined in Section [13-24-2](#), if the public body's consideration of the information is necessary in
362 order to properly conduct a procurement under Title 63G, Chapter 6a, Utah Procurement Code;
- 363 (o) the purpose of discussing information provided to the public body during the
364 procurement process under Title 63G, Chapter 6a, Utah Procurement Code, if, at the time of
365 the meeting:
 - 366 (i) the information may not, under Title 63G, Chapter 6a, Utah Procurement Code, be

367 disclosed to a member of the public or to a participant in the procurement process; and
368 (ii) the public body needs to review or discuss the information in order to properly
369 fulfill its role and responsibilities in the procurement process;

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

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

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

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

378 (2) The following meetings shall be closed:

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

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

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

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

386 (c) a meeting of the Opioid and Overdose Fatality Review Committee, created in
387 Section 26-7-13, to review and discuss an individual case, as described in Subsection
388 26-7-13(10);

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

393 (e) a meeting of the Compassionate Use Board established in Section 26-61a-105 for
394 the purpose of reviewing petitions for a medical cannabis card in accordance with Section
395 26-61a-105; [and]

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

397 (i) the purpose of the meeting is to discuss an interstate claim to the use of the water in

398 the Colorado River system; and

399 (ii) failing to close the meeting would:

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

401 [63G-2-305](#)(82);

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

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

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

409 (g) a meeting of a project entity if:

410 (i) the purpose of the meeting is to conduct a strategy session to discuss market
411 conditions relevant to a business decision regarding the value of a project entity asset if the
412 terms of the business decision are publicly disclosed before the decision is finalized and a
413 public discussion would:

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

416 (B) prevent the project entity from completing on the best possible terms a
417 contemplated transaction concerning the project entity asset;

418 (ii) the purpose of the meeting is to discuss a record, the disclosure of which could
419 cause commercial injury to, or confer a competitive advantage upon a potential or actual
420 competitor of, the project entity;

421 (iii) the purpose of the meeting is to discuss a business decision, the disclosure of
422 which could cause commercial injury to, or confer a competitive advantage upon a potential or
423 actual competitor of, the project entity; or

424 (iv) failing to close the meeting would prevent the project entity from getting the best
425 price on the market.

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

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

428 (b) discuss filling a midterm vacancy or temporary absence governed by Title 20A,

429 Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office;
430 or

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

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

436 **63G-6a-103. Definitions.**

437 As used in this chapter:

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

440 (2) "Approved vendor list" means a list of approved vendors established under Section
441 [63G-6a-507](#).

442 (3) "Approved vendor list process" means the procurement process described in
443 Section [63G-6a-507](#).

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

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

447 (6) "Board" means the Utah State Procurement Policy Board, created in Section
448 [63G-6a-202](#).

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

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

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

456 (10) "Chief procurement officer" means the individual appointed under Section
457 [63A-2-102](#).

458 (11) "Conducting procurement unit" means a procurement unit that conducts all
459 aspects of a procurement:

- 460 (a) except:
- 461 (i) reviewing a solicitation to verify that it is in proper form; and
- 462 (ii) causing the publication of a notice of a solicitation; and
- 463 (b) including:
- 464 (i) preparing any solicitation document;
- 465 (ii) appointing an evaluation committee;
- 466 (iii) conducting the evaluation process, except the process relating to scores calculated
- 467 for costs of proposals;
- 468 (iv) selecting and recommending the person to be awarded a contract;
- 469 (v) negotiating the terms and conditions of a contract, subject to the issuing
- 470 procurement unit's approval; and
- 471 (vi) contract administration.
- 472 (12) "Conservation district" means the same as that term is defined in Section
- 473 [17D-3-102](#).
- 474 (13) "Construction project":
- 475 (a) means a project for the construction, renovation, alteration, improvement, or repair
- 476 of a public facility on real property, including all services, labor, supplies, and materials for the
- 477 project; and
- 478 (b) does not include services and supplies for the routine, day-to-day operation, repair,
- 479 or maintenance of an existing public facility.
- 480 (14) "Construction manager/general contractor":
- 481 (a) means a contractor who enters into a contract:
- 482 (i) for the management of a construction project; and
- 483 (ii) that allows the contractor to subcontract for additional labor and materials that are
- 484 not included in the contractor's cost proposal submitted at the time of the procurement of the
- 485 contractor's services; and
- 486 (b) does not include a contractor whose only subcontract work not included in the
- 487 contractor's cost proposal submitted as part of the procurement of the contractor's services is to
- 488 meet subcontracted portions of change orders approved within the scope of the project.
- 489 (15) "Construction subcontractor":
- 490 (a) means a person under contract with a contractor or another subcontractor to provide

491 services or labor for the design or construction of a construction project;

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

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

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

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

500 (a) implementing the contract;

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

503 (c) executing change orders;

504 (d) processing contract amendments;

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

506 (f) curing contract errors and deficiencies;

507 (g) terminating a contract;

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

509 (i) computing payments under the contract; and

510 (j) closing out a contract.

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

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

513 (a) more than one procurement unit; or

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

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

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

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

522 reimbursed for costs which are allowed and allocated in accordance with the contract terms and
523 the provisions of this chapter, and a fee, if any.

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

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

528 (25) "Design professional" means:

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

530 Licensing Act;

531 (b) an individual licensed as a professional engineer or professional land surveyor
532 under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing
533 Act; or

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

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

538 (27) "Design professional services" means:

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

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

542 (c) master planning and programming services; or

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

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

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

549 (30) "Educational procurement unit" means:

550 (a) a school district;

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

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

- 553 (d) the Utah Education and Telehealth Network;
- 554 (e) an institution of higher education of the state described in Section [53B-1-102](#); or
- 555 (f) the State Board of Education.

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

- 558 (a) is regularly maintained by a manufacturer or contractor;
- 559 (b) is published or otherwise available for inspection by customers; and
- 560 (c) states prices at which sales are currently or were last made to a significant number
561 of any category of buyers or buyers constituting the general buying public for the supplies or
562 services involved.

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

565 (b) "Executive branch procurement unit" does not include the Colorado River
566 Authority of Utah as provided in Section [63M-14-210](#).

567 (33) "Facilities division" means the Division of Facilities Construction and
568 Management, created in Section [63A-5b-301](#).

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

- 572 (a) the contract provides, under circumstances specified in the contract, for an
573 adjustment in price that is not based on cost to the contractor; or
- 574 (b) an adjustment is required by law.

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

- 577 (a) is based on the consumer price index or another commercially acceptable index,
578 source, or formula; and
- 579 (b) is not based on a percentage of the cost to the contractor.

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

583 (37) "Immaterial error":

- 584 (a) means an irregularity or abnormality that is:
- 585 (i) a matter of form that does not affect substance; or
- 586 (ii) an inconsequential variation from a requirement of a solicitation that has no, little,
- 587 or a trivial effect on the procurement process and that is not prejudicial to other vendors; and
- 588 (b) includes:
- 589 (i) a missing signature, missing acknowledgment of an addendum, or missing copy of a
- 590 professional license, bond, or insurance certificate;
- 591 (ii) a typographical error;
- 592 (iii) an error resulting from an inaccuracy or omission in the solicitation; and
- 593 (iv) any other error that the procurement official reasonably considers to be immaterial.
- 594 (38) "Indefinite quantity contract" means a fixed price contract that:
- 595 (a) is for an indefinite amount of procurement items to be supplied as ordered by a
- 596 procurement unit; and
- 597 (b) (i) does not require a minimum purchase amount; or
- 598 (ii) provides a maximum purchase limit.
- 599 (39) "Independent procurement unit" means:
- 600 (a) (i) a legislative procurement unit;
- 601 (ii) a judicial branch procurement unit;
- 602 (iii) an educational procurement unit;
- 603 (iv) a local government procurement unit;
- 604 (v) a conservation district;
- 605 (vi) a local building authority;
- 606 (vii) a local district;
- 607 (viii) a public corporation;
- 608 (ix) a special service district; or
- 609 (x) the Utah Communications Authority, established in Section [63H-7a-201](#);
- 610 (b) the building board or the facilities division, but only to the extent of the
- 611 procurement authority provided under Title 63A, Chapter 5b, Administration of State
- 612 Facilities;
- 613 (c) the attorney general, but only to the extent of the procurement authority provided
- 614 under Title 67, Chapter 5, Attorney General;

615 (d) the Department of Transportation, but only to the extent of the procurement
616 authority provided under Title 72, Transportation Code; or

617 (e) any other executive branch department, division, office, or entity that has statutory
618 procurement authority outside this chapter, but only to the extent of that statutory procurement
619 authority.

620 (40) "Invitation for bids":

621 (a) means a document used to solicit:

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

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

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

625 described in Subsection (40)(a).

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

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

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

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

630 (42) "Judicial procurement unit" means:

631 (a) the Utah Supreme Court;

632 (b) the Utah Court of Appeals;

633 (c) the Judicial Council;

634 (d) a state judicial district; or

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

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

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

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

641 (44) "Legislative procurement unit" means:

642 (a) the Legislature;

643 (b) the Senate;

644 (c) the House of Representatives;

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

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

652 (45) "Local building authority" means the same as that term is defined in Section
653 [17D-2-102](#).

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

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

656 ~~[(a) a county or municipality, and each office or agency of the county or municipality,~~
657 ~~unless the county or municipality adopts its own procurement code by ordinance;]~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

698 (57) "Procurement official" means:

699 (a) for a procurement unit other than an independent procurement unit, the chief
700 procurement officer;

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

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

705 (d) for a local government procurement unit:

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

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

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

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

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

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

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

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

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

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

724 (m) for the State Board of Education, the State Board of Education or the State Board
725 of Education's designee;

726 (n) for the Utah Board of Higher Education, the Commissioner of Higher Education or
727 the designee of the Commissioner of Higher Education;

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

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

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

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

743 (iv) for the Department of Transportation created in Section 72-1-201, and only to the
744 extent of procurement activities of the Department of Transportation as an independent
745 procurement unit under the procurement authority provided under Title 72, Transportation
746 Code, the executive director of the Department of Transportation or the executive director's
747 designee; or

748 (v) for any other executive branch department, division, office, or entity that has
749 statutory procurement authority outside this chapter, and only to the extent of the procurement
750 activities of the department, division, office, or entity as an independent procurement unit
751 under the procurement authority provided outside this chapter for the department, division,
752 office, or entity, the chief executive officer of the department, division, office, or entity or the
753 chief executive officer's designee.

754 (58) "Procurement unit":

755 (a) means:

756 (i) a legislative procurement unit;

757 (ii) an executive branch procurement unit;

758 (iii) a judicial procurement unit;

759 (iv) an educational procurement unit;

760 (v) the Utah Communications Authority, established in Section 63H-7a-201;

761 (vi) a local government procurement unit;

762 (vii) a local district;

763 (viii) a special service district;

764 (ix) a local building authority;

765 (x) a conservation district; and

766 (xi) a public corporation; and

767 (b) except for a project entity, to the extent that a project entity is subject to this chapter
768 as described in Section 11-13-316, does not include a political subdivision created under Title
769 11, Chapter 13, Interlocal Cooperation Act.

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

- 772 (a) accounting;
- 773 (b) administrative law judge service;
- 774 (c) architecture;
- 775 (d) construction design and management;
- 776 (e) engineering;
- 777 (f) financial services;
- 778 (g) information technology;
- 779 (h) the law;
- 780 (i) medicine;
- 781 (j) psychiatry; or
- 782 (k) underwriting.

783 (60) "Protest officer" means:

- 784 (a) for the division or an independent procurement unit:
 - 785 (i) the procurement official;
 - 786 (ii) the procurement official's designee who is an employee of the procurement unit; or
 - 787 (iii) a person designated by rule made by the rulemaking authority; or
- 788 (b) for a procurement unit other than an independent procurement unit, the chief
789 procurement officer or the chief procurement officer's designee who is an employee of the
790 division.

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

792 ~~[(61)]~~ (62) "Public corporation" means the same as that term is defined in Section
793 [63E-1-102](#).

794 ~~[(62)]~~ (63) "Public entity" means the state or any other government entity within the
795 state that expends public funds.

796 ~~[(63)]~~ (64) "Public facility" means a building, structure, infrastructure, improvement,
797 or other facility of a public entity.

798 ~~[(64)]~~ (65) "Public funds" means money, regardless of its source, including from the
799 federal government, that is owned or held by a procurement unit.

800 ~~[(65)]~~ (66) "Public transit district" means a public transit district organized under Title

801 17B, Chapter 2a, Part 8, Public Transit District Act.

802 ~~[(66)]~~ (67) "Public-private partnership" means an arrangement or agreement, occurring
803 on or after January 1, 2017, between a procurement unit and one or more contractors to provide
804 for a public need through the development or operation of a project in which the contractor or
805 contractors share with the procurement unit the responsibility or risk of developing, owning,
806 maintaining, financing, or operating the project.

807 ~~[(67)]~~ (68) "Qualified vendor" means a vendor who:

808 (a) is responsible; and

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

812 ~~[(68)]~~ (69) "Real property" means land and any building, fixture, improvement,
813 appurtenance, structure, or other development that is permanently affixed to land.

814 ~~[(69)]~~ (70) "Request for information" means a nonbinding process through which a
815 procurement unit requests information relating to a procurement item.

816 ~~[(70)]~~ (71) "Request for proposals" means a document used to solicit proposals to
817 provide a procurement item to a procurement unit, including all other documents that are
818 attached to that document or incorporated in that document by reference.

819 ~~[(71)]~~ (72) "Request for proposals process" means the procurement process described
820 in Part 7, Request for Proposals.

821 ~~[(72)]~~ (73) "Request for statement of qualifications" means a document used to solicit
822 information about the qualifications of a person interested in responding to a potential
823 procurement, including all other documents attached to that document or incorporated in that
824 document by reference.

825 ~~[(73)]~~ (74) "Requirements contract" means a contract:

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

828 (b) that:

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

830 (ii) provides a maximum purchase limit.

831 ~~[(74)]~~ (75) "Responsible" means being capable, in all respects, of:

- 832 (a) meeting all the requirements of a solicitation; and
- 833 (b) fully performing all the requirements of the contract resulting from the solicitation,
- 834 including being financially solvent with sufficient financial resources to perform the contract.
- 835 ~~[(75)]~~ (76) "Responsive" means conforming in all material respects to the requirements
- 836 of a solicitation.
- 837 ~~[(76)]~~ (77) "Rule" includes a policy or regulation adopted by the rulemaking authority,
- 838 if adopting a policy or regulation is the method the rulemaking authority uses to adopt
- 839 provisions that govern the applicable procurement unit.
- 840 ~~[(77)]~~ (78) "Rulemaking authority" means:
- 841 (a) for a legislative procurement unit, the Legislative Management Committee;
- 842 (b) for a judicial procurement unit, the Judicial Council;
- 843 (c) (i) only to the extent of the procurement authority expressly granted to the
- 844 procurement unit by statute:
- 845 (A) for the building board or the facilities division, the building board;
- 846 (B) for the Office of the Attorney General, the attorney general;
- 847 (C) for the Department of Transportation created in Section [72-1-201](#), the executive
- 848 director of the Department of Transportation; and
- 849 (D) for any other executive branch department, division, office, or entity that has
- 850 statutory procurement authority outside this chapter, the governing authority of the department,
- 851 division, office, or entity; and
- 852 (ii) for each other executive branch procurement unit, the board;
- 853 (d) for a local government procurement unit:
- 854 (i) the governing body of the local government unit; or
- 855 (ii) an individual or body designated by the local government procurement unit;
- 856 (e) for a school district or a public school, the board, except to the extent of a school
- 857 district's own nonadministrative rules that do not conflict with the provisions of this chapter;
- 858 (f) for a state institution of higher education, the Utah Board of Higher Education;
- 859 (g) for the State Board of Education or the Utah Schools for the Deaf and the Blind, the
- 860 State Board of Education;
- 861 (h) for a public transit district, the chief executive of the public transit district;
- 862 (i) for a local district other than a public transit district or for a special service district,

863 the board, except to the extent that the board of trustees of the local district or the governing
864 body of the special service district makes its own rules:

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

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

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

869 (k) for the School and Institutional Trust Lands Administration, created in Section
870 53C-1-201, the School and Institutional Trust Lands Board of Trustees;

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

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

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

876 [~~78~~] (79) "Service":

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

879 (b) includes a professional service; and

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

882 [~~79~~] (80) "Small purchase process" means the procurement process described in
883 Section 63G-6a-506.

884 [~~80~~] (81) "Sole source contract" means a contract resulting from a sole source
885 procurement.

886 [~~81~~] (82) "Sole source procurement" means a procurement without competition
887 pursuant to a determination under Subsection 63G-6a-802(1)(a) that there is only one source
888 for the procurement item.

889 [~~82~~] (83) "Solicitation" means an invitation for bids, request for proposals, or request
890 for statement of qualifications.

891 [~~83~~] (84) "Solicitation response" means:

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

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

894 (c) a statement of qualifications submitted in response to a request for statement of
895 qualifications.

896 ~~[(84)]~~ (85) "Special service district" means the same as that term is defined in Section
897 17D-1-102.

898 ~~[(85)]~~ (86) "Specification" means any description of the physical or functional
899 characteristics or of the nature of a procurement item included in an invitation for bids or a
900 request for proposals, or otherwise specified or agreed to by a procurement unit, including a
901 description of:

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

903 (b) preparing a procurement item for delivery.

904 ~~[(86)]~~ (87) "Standard procurement process" means:

905 (a) the bidding process;

906 (b) the request for proposals process;

907 (c) the approved vendor list process;

908 (d) the small purchase process; or

909 (e) the design professional procurement process.

910 ~~[(87)]~~ (88) "State cooperative contract" means a contract awarded by the division for
911 and in behalf of all public entities.

912 ~~[(88)]~~ (89) "Statement of qualifications" means a written statement submitted to a
913 procurement unit in response to a request for statement of qualifications.

914 ~~[(89)]~~ (90) "Subcontractor":

915 (a) means a person under contract to perform part of a contractual obligation under the
916 control of the contractor, whether the person's contract is with the contractor directly or with
917 another person who is under contract to perform part of a contractual obligation under the
918 control of the contractor; and

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

921 ~~[(90)]~~ (91) "Technology" means the same as "information technology," as defined in
922 Section 63A-16-102.

923 ~~[(91)]~~ (92) "Tie bid" means that the lowest responsive bids of responsible bidders are
924 identical in price.

925 [~~(92)~~] (93) "Time and materials contract" means a contract under which the contractor
926 is paid:

- 927 (a) the actual cost of direct labor at specified hourly rates;
- 928 (b) the actual cost of materials and equipment usage; and
- 929 (c) an additional amount, expressly described in the contract, to cover overhead and
930 profit, that is not based on a percentage of the cost to the contractor.

931 [~~(93)~~] (94) "Transitional costs":

- 932 (a) means the costs of changing:
 - 933 (i) from an existing provider of a procurement item to another provider of that
934 procurement item; or
 - 935 (ii) from an existing type of procurement item to another type;
- 936 (b) includes:
 - 937 (i) training costs;
 - 938 (ii) conversion costs;
 - 939 (iii) compatibility costs;
 - 940 (iv) costs associated with system downtime;
 - 941 (v) disruption of service costs;
 - 942 (vi) staff time necessary to implement the change;
 - 943 (vii) installation costs; and
 - 944 (viii) ancillary software, hardware, equipment, or construction costs; and
- 945 (c) does not include:
 - 946 (i) the costs of preparing for or engaging in a procurement process; or
 - 947 (ii) contract negotiation or drafting costs.

948 [~~(94)~~] (95) "Vendor":

- 949 (a) means a person who is seeking to enter into a contract with a procurement unit to
950 provide a procurement item; and
- 951 (b) includes:
 - 952 (i) a bidder;
 - 953 (ii) an offeror;
 - 954 (iii) an approved vendor;
 - 955 (iv) a design professional; and

956 (v) a person who submits an unsolicited proposal under Section [63G-6a-712](#).
957 Section 7. Section **63G-6a-107.5** is enacted to read:
958 **63G-6a-107.5. Application of chapter to project entities.**
959 This chapter applies to a project entity to the extent described in Section [11-13-316](#).