

**EDUCATION FALSE CLAIMS AMENDMENTS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jordan D. Teuscher**

Senate Sponsor: \_\_\_\_\_

**LONG TITLE**

**General Description:**

This bill makes changes to procurement provisions for the public education system.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ makes changes to procurement provisions for school districts, public schools, and the State Board of Education;
- ▶ enacts false claims provisions for educational procurement units; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**63G-6a-103**, as last amended by Laws of Utah 2022, Chapters 421 and 422

**63G-6a-106**, as last amended by Laws of Utah 2021, Chapter 344

ENACTS:

**63G-6a-2501**, Utah Code Annotated 1953

**63G-6a-2502**, Utah Code Annotated 1953



- 28            [63G-6a-2503](#), Utah Code Annotated 1953
- 29            [63G-6a-2504](#), Utah Code Annotated 1953
- 30            [63G-6a-2505](#), Utah Code Annotated 1953
- 31            [63G-6a-2506](#), Utah Code Annotated 1953
- 32            [63G-6a-2507](#), Utah Code Annotated 1953



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

35            Section 1. Section **63G-6a-103** is amended to read:

36            **63G-6a-103. Definitions.**

37            As used in this chapter:

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

40            (2) "Approved vendor list" means a list of approved vendors established under Section  
41 [63G-6a-507](#).

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

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

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

47            (6) "Board" means the Utah State Procurement Policy Board, created in Section  
48 [63G-6a-202](#).

49            (7) "Change directive" means a written order signed by the procurement officer that  
50 directs the contractor to suspend work or make changes, as authorized by contract, without the  
51 consent of the contractor.

52            (8) "Change order" means a written alteration in specifications, delivery point, rate of  
53 delivery, period of performance, price, quantity, or other provisions of a contract, upon mutual  
54 agreement of the parties to the contract.

55            (9) "Chief procurement officer" means the individual appointed under Section  
56 [63A-2-102](#).

57            (10) "Conducting procurement unit" means a procurement unit that conducts all  
58 aspects of a procurement:

- 59 (a) except:
- 60 (i) reviewing a solicitation to verify that it is in proper form; and
- 61 (ii) causing the publication of a notice of a solicitation; and
- 62 (b) including:
- 63 (i) preparing any solicitation document;
- 64 (ii) appointing an evaluation committee;
- 65 (iii) conducting the evaluation process, except the process relating to scores calculated
- 66 for costs of proposals;
- 67 (iv) selecting and recommending the person to be awarded a contract;
- 68 (v) negotiating the terms and conditions of a contract, subject to the issuing
- 69 procurement unit's approval; and
- 70 (vi) contract administration.
- 71 (11) "Conservation district" means the same as that term is defined in Section
- 72 [17D-3-102](#).
- 73 (12) "Construction project":
- 74 (a) means a project for the construction, renovation, alteration, improvement, or repair
- 75 of a public facility on real property, including all services, labor, supplies, and materials for the
- 76 project; and
- 77 (b) does not include services and supplies for the routine, day-to-day operation, repair,
- 78 or maintenance of an existing public facility.
- 79 (13) "Construction manager/general contractor":
- 80 (a) means a contractor who enters into a contract:
- 81 (i) for the management of a construction project; and
- 82 (ii) that allows the contractor to subcontract for additional labor and materials that are
- 83 not included in the contractor's cost proposal submitted at the time of the procurement of the
- 84 contractor's services; and
- 85 (b) does not include a contractor whose only subcontract work not included in the
- 86 contractor's cost proposal submitted as part of the procurement of the contractor's services is to
- 87 meet subcontracted portions of change orders approved within the scope of the project.
- 88 (14) "Construction subcontractor":
- 89 (a) means a person under contract with a contractor or another subcontractor to provide

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

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

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

95 (15) "Contract" means an agreement for a procurement.

96 (16) "Contract administration" means all functions, duties, and responsibilities  
97 associated with managing, overseeing, and carrying out a contract between a procurement unit  
98 and a contractor, including:

99 (a) implementing the contract;

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

102 (c) executing change orders;

103 (d) processing contract amendments;

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

105 (f) curing contract errors and deficiencies;

106 (g) terminating a contract;

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

108 (i) computing payments under the contract; and

109 (j) closing out a contract.

110 (17) "Contractor" means a person who is awarded a contract with a procurement unit.

111 (18) "Cooperative procurement" means procurement conducted by, or on behalf of:

112 (a) more than one procurement unit; or

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

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

117 (20) "Cost-plus-a-percentage-of-cost contract" means a contract under which the  
118 contractor is paid a percentage of the total actual expenses or costs in addition to the  
119 contractor's actual expenses or costs.

120 (21) "Cost-reimbursement contract" means a contract under which a contractor is

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

123 (22) "Days" means calendar days, unless expressly provided otherwise.

124 (23) "Definite quantity contract" means a fixed price contract that provides for a  
125 specified amount of supplies over a specified period, with deliveries scheduled according to a  
126 specified schedule.

127 (24) "Design professional" means:

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

129 Licensing Act;

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

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

135 (25) "Design professional procurement process" means the procurement process  
136 described in Part 15, Design Professional Services.

137 (26) "Design professional services" means:

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

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

141 (c) master planning and programming services; or

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

144 (27) "Design-build" means the procurement of design professional services and  
145 construction by the use of a single contract.

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

148 (29) "Educational procurement unit" means:

149 (a) a school district;

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

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

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

155 (30) "Established catalogue price" means the price included in a catalogue, price list,  
156 schedule, or other form that:

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

162 (31) (a) "Executive branch procurement unit" means a department, division, office,  
163 bureau, agency, or other organization within the state executive branch.

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

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

168 (33) "Fixed price contract" means a contract that provides a price, for each  
169 procurement item obtained under the contract, that is not subject to adjustment except to the  
170 extent that:

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

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

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

179 (35) "Grant" means an expenditure of public funds or other assistance, or an agreement  
180 to expend public funds or other assistance, for a public purpose authorized by law, without  
181 acquiring a procurement item in exchange.

182 (36) "Immaterial error":

- 183 (a) means an irregularity or abnormality that is:
- 184 (i) a matter of form that does not affect substance; or
- 185 (ii) an inconsequential variation from a requirement of a solicitation that has no, little,
- 186 or a trivial effect on the procurement process and that is not prejudicial to other vendors; and
- 187 (b) includes:
- 188 (i) a missing signature, missing acknowledgment of an addendum, or missing copy of a
- 189 professional license, bond, or insurance certificate;
- 190 (ii) a typographical error;
- 191 (iii) an error resulting from an inaccuracy or omission in the solicitation; and
- 192 (iv) any other error that the procurement official reasonably considers to be immaterial.
- 193 (37) "Indefinite quantity contract" means a fixed price contract that:
- 194 (a) is for an indefinite amount of procurement items to be supplied as ordered by a
- 195 procurement unit; and
- 196 (b) (i) does not require a minimum purchase amount; or
- 197 (ii) provides a maximum purchase limit.
- 198 (38) "Independent procurement unit" means:
- 199 (a) (i) a legislative procurement unit;
- 200 (ii) a judicial branch procurement unit;
- 201 (iii) an educational procurement unit;
- 202 (iv) a local government procurement unit;
- 203 (v) a conservation district;
- 204 (vi) a local building authority;
- 205 (vii) a local district;
- 206 (viii) a public corporation;
- 207 (ix) a special service district; or
- 208 (x) the Utah Communications Authority, established in Section [63H-7a-201](#);
- 209 (b) the facilities division, but only to the extent of the procurement authority provided
- 210 under Title 63A, Chapter 5b, Administration of State Facilities;
- 211 (c) the attorney general, but only to the extent of the procurement authority provided
- 212 under Title 67, Chapter 5, Attorney General;
- 213 (d) the Department of Transportation, but only to the extent of the procurement

214 authority provided under Title 72, Transportation Code; or

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

218 (39) "Invitation for bids":

219 (a) means a document used to solicit:

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

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

222 (b) includes all documents attached to or incorporated by reference in a document  
223 described in Subsection (39)(a).

224 (40) "Issuing procurement unit" means a procurement unit that:

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

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

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

228 (41) "Judicial procurement unit" means:

229 (a) the Utah Supreme Court;

230 (b) the Utah Court of Appeals;

231 (c) the Judicial Council;

232 (d) a state judicial district; or

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

235 (42) "Labor hour contract" is a contract under which:

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

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

239 (43) "Legislative procurement unit" means:

240 (a) the Legislature;

241 (b) the Senate;

242 (c) the House of Representatives;

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

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

- 245 (i) within the state legislative branch; or  
246 (ii) (A) that is created by statute to advise or make recommendations to the Legislature;  
247 (B) the membership of which includes legislators; and  
248 (C) for which the Office of Legislative Research and General Counsel provides staff  
249 support.
- 250 (44) "Local building authority" means the same as that term is defined in Section  
251 [17D-2-102](#).
- 252 (45) "Local district" means the same as that term is defined in Section [17B-1-102](#).
- 253 (46) "Local government procurement unit" means:  
254 (a) a county, municipality, or project entity, and each office of the county, municipality,  
255 or project entity, unless:  
256 (i) the county or municipality adopts a procurement code by ordinance; or  
257 (ii) the project entity adopts a procurement code through the process described in  
258 Section [11-13-316](#);
- 259 (b) (i) a county or municipality that has adopted this entire chapter by ordinance, and  
260 each office or agency of that county or municipality; and  
261 (ii) a project entity that has adopted this entire chapter through the process described in  
262 Subsection [11-13-316](#); or
- 263 (c) a county, municipality, or project entity, and each office of the county, municipality,  
264 or project entity that has adopted a portion of this chapter to the extent that:  
265 (i) a term in the ordinance is used in the adopted chapter; or  
266 (ii) a term in the ordinance is used in the language a project entity adopts in its  
267 procurement code through the process described in Section [11-13-316](#).
- 268 (47) "Multiple award contracts" means the award of a contract for an indefinite  
269 quantity of a procurement item to more than one person.
- 270 (48) "Multiyear contract" means a contract that extends beyond a one-year period,  
271 including a contract that permits renewal of the contract, without competition, beyond the first  
272 year of the contract.
- 273 (49) "Municipality" means a city, town, or metro township.
- 274 (50) "Nonadopting local government procurement unit" means:  
275 (a) a county or municipality that has not adopted Part 16, Protests, Part 17,

276 Procurement Appeals Board, Part 18, Appeals to Court and Court Proceedings, and Part 19,  
277 General Provisions Related to Protest or Appeal; and

278 (b) each office or agency of a county or municipality described in Subsection (50)(a).

279 (51) "Offeror" means a person who submits a proposal in response to a request for  
280 proposals.

281 (52) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference  
282 under the requirements of this chapter.

283 (53) "Procure" means to acquire a procurement item through a procurement.

284 (54) "Procurement" means the acquisition of a procurement item through an  
285 expenditure of public funds, or an agreement to expend public funds, including an acquisition  
286 through a public-private partnership.

287 (55) "Procurement item" means an item of personal property, a technology, a service,  
288 or a construction project.

289 (56) "Procurement official" means:

290 (a) for a procurement unit other than an independent procurement unit, the chief  
291 procurement officer;

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

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

296 (d) for a local government procurement unit:

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

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

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

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

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

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

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

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

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

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

315 (m) for the State Board of Education, the State Board of Education or the State Board  
316 of Education's designee;

317 (n) for the Utah Board of Higher Education, the Commissioner of Higher Education or  
318 the designee of the Commissioner of Higher Education;

319 (o) for the Utah Communications Authority, established in Section 63H-7a-201, the  
320 executive director of the Utah Communications Authority or the executive director's designee;  
321 or

322 (p) (i) for the facilities division, and only to the extent of procurement activities of the  
323 facilities division as an independent procurement unit under the procurement authority  
324 provided under Title 63A, Chapter 5b, Administration of State Facilities, the director of the  
325 facilities division or the director's designee;

326 (ii) for the attorney general, and only to the extent of procurement activities of the  
327 attorney general as an independent procurement unit under the procurement authority provided  
328 under Title 67, Chapter 5, Attorney General, the attorney general or the attorney general's  
329 designee;

330 (iii) for the Department of Transportation created in Section 72-1-201, and only to the  
331 extent of procurement activities of the Department of Transportation as an independent  
332 procurement unit under the procurement authority provided under Title 72, Transportation  
333 Code, the executive director of the Department of Transportation or the executive director's  
334 designee; or

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

338 under the procurement authority provided outside this chapter for the department, division,  
339 office, or entity, the chief executive officer of the department, division, office, or entity or the  
340 chief executive officer's designee.

341 (57) "Procurement unit":

342 (a) means:

343 (i) a legislative procurement unit;

344 (ii) an executive branch procurement unit;

345 (iii) a judicial procurement unit;

346 (iv) an educational procurement unit;

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

348 (vi) a local government procurement unit;

349 (vii) a local district;

350 (viii) a special service district;

351 (ix) a local building authority;

352 (x) a conservation district; and

353 (xi) a public corporation; and

354 (b) except for a project entity, to the extent that a project entity is subject to this chapter  
355 as described in Section [11-13-316](#), does not include a political subdivision created under Title  
356 11, Chapter 13, Interlocal Cooperation Act.

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

359 (a) accounting;

360 (b) administrative law judge service;

361 (c) architecture;

362 (d) construction design and management;

363 (e) engineering;

364 (f) financial services;

365 (g) information technology;

366 (h) the law;

367 (i) medicine;

368 (j) psychiatry; or

- 369 (k) underwriting.
- 370 (59) "Protest officer" means:
- 371 (a) for the division or an independent procurement unit:
- 372 (i) the procurement official;
- 373 (ii) the procurement official's designee who is an employee of the procurement unit; or
- 374 (iii) a person designated by rule made by the rulemaking authority; or
- 375 (b) for a procurement unit other than an independent procurement unit, the chief
- 376 procurement officer or the chief procurement officer's designee who is an employee of the
- 377 division.
- 378 (60) "Public corporation" means the same as that term is defined in Section [63E-1-102](#).
- 379 (61) "Project entity" means the same as that term is defined in Section [11-13-103](#).
- 380 (62) "Public entity" means the state or any other government entity within the state that
- 381 expends public funds.
- 382 (63) "Public facility" means a building, structure, infrastructure, improvement, or other
- 383 facility of a public entity.
- 384 (64) "Public funds" means money, regardless of its source, including from the federal
- 385 government, that is owned or held by a procurement unit.
- 386 (65) "Public transit district" means a public transit district organized under Title 17B,
- 387 Chapter 2a, Part 8, Public Transit District Act.
- 388 (66) "Public-private partnership" means an arrangement or agreement, occurring on or
- 389 after January 1, 2017, between a procurement unit and one or more contractors to provide for a
- 390 public need through the development or operation of a project in which the contractor or
- 391 contractors share with the procurement unit the responsibility or risk of developing, owning,
- 392 maintaining, financing, or operating the project.
- 393 (67) "Qualified vendor" means a vendor who:
- 394 (a) is responsible; and
- 395 (b) submits a responsive statement of qualifications under Section [63G-6a-410](#) that
- 396 meets the minimum mandatory requirements, evaluation criteria, and any applicable score
- 397 thresholds set forth in the request for statement of qualifications.
- 398 (68) "Real property" means land and any building, fixture, improvement, appurtenance,
- 399 structure, or other development that is permanently affixed to land.

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

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

405 (71) "Request for proposals process" means the procurement process described in Part  
406 7, Request for Proposals.

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

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

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

414 (b) that:

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

416 (ii) provides a maximum purchase limit.

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

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

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

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

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

426 (77) "Rulemaking authority" means:

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

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

429 (c) (i) only to the extent of the procurement authority expressly granted to the  
430 procurement unit by statute;

- 431 (A) for the facilities division, the facilities division;
- 432 (B) for the Office of the Attorney General, the attorney general;
- 433 (C) for the Department of Transportation created in Section 72-1-201, the executive  
434 director of the Department of Transportation; and
- 435 (D) for any other executive branch department, division, office, or entity that has  
436 statutory procurement authority outside this chapter, the governing authority of the department,  
437 division, office, or entity; and
- 438 (ii) for each other executive branch procurement unit, the board;
- 439 (d) for a local government procurement unit:
- 440 (i) the governing body of the local government unit; or
- 441 (ii) an individual or body designated by the local government procurement unit;
- 442 (e) for a school district or a public school, [~~the board, except to the extent of a school~~  
443 ~~district's own nonadministrative rules that do not conflict with the provisions of this chapter]~~  
444 the State Board of Education;
- 445 (f) for a state institution of higher education, the Utah Board of Higher Education;
- 446 (g) for the State Board of Education or the Utah Schools for the Deaf and the Blind, the  
447 State Board of Education;
- 448 (h) for a public transit district, the chief executive of the public transit district;
- 449 (i) for a local district other than a public transit district or for a special service district,  
450 the board, except to the extent that the board of trustees of the local district or the governing  
451 body of the special service district makes its own rules:
- 452 (i) with respect to a subject addressed by board rules; or
- 453 (ii) that are in addition to board rules;
- 454 (j) for the Utah Educational Savings Plan, created in Section 53B-8a-103, the Utah  
455 Board of Higher Education;
- 456 (k) for the School and Institutional Trust Lands Administration, created in Section  
457 53C-1-201, the School and Institutional Trust Lands Board of Trustees;
- 458 (l) for the School and Institutional Trust Fund Office, created in Section 53D-1-201,  
459 the School and Institutional Trust Fund Board of Trustees;
- 460 (m) for the Utah Communications Authority, established in Section 63H-7a-201, the  
461 Utah Communications Authority board, created in Section 63H-7a-203; or

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

463 (78) "Service":

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

466 (b) includes a professional service; and

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

469 (79) "Small purchase process" means the procurement process described in Section  
470 [63G-6a-506](#).

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

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

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

477 (83) "Solicitation response" means:

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

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

480 (c) a statement of qualifications submitted in response to a request for statement of  
481 qualifications.

482 (84) "Special service district" means the same as that term is defined in Section  
483 [17D-1-102](#).

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

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

488 (b) preparing a procurement item for delivery.

489 (86) "Standard procurement process" means:

490 (a) the bidding process;

491 (b) the request for proposals process;

492 (c) the approved vendor list process;

- 493 (d) the small purchase process; or  
494 (e) the design professional procurement process.
- 495 (87) "State cooperative contract" means a contract awarded by the division for and in  
496 behalf of all public entities.
- 497 (88) "Statement of qualifications" means a written statement submitted to a  
498 procurement unit in response to a request for statement of qualifications.
- 499 (89) "Subcontractor":  
500 (a) means a person under contract to perform part of a contractual obligation under the  
501 control of the contractor, whether the person's contract is with the contractor directly or with  
502 another person who is under contract to perform part of a contractual obligation under the  
503 control of the contractor; and  
504 (b) includes a supplier, distributor, or other vendor that furnishes supplies or services  
505 to a contractor.
- 506 (90) "Technology" means the same as "information technology," as defined in Section  
507 [63A-16-102](#).
- 508 (91) "Tie bid" means that the lowest responsive bids of responsible bidders are  
509 identical in price.
- 510 (92) "Time and materials contract" means a contract under which the contractor is paid:  
511 (a) the actual cost of direct labor at specified hourly rates;  
512 (b) the actual cost of materials and equipment usage; and  
513 (c) an additional amount, expressly described in the contract, to cover overhead and  
514 profit, that is not based on a percentage of the cost to the contractor.
- 515 (93) "Transitional costs":  
516 (a) means the costs of changing:  
517 (i) from an existing provider of a procurement item to another provider of that  
518 procurement item; or  
519 (ii) from an existing type of procurement item to another type;  
520 (b) includes:  
521 (i) training costs;  
522 (ii) conversion costs;  
523 (iii) compatibility costs;

- 524 (iv) costs associated with system downtime;
- 525 (v) disruption of service costs;
- 526 (vi) staff time necessary to implement the change;
- 527 (vii) installation costs; and
- 528 (viii) ancillary software, hardware, equipment, or construction costs; and
- 529 (c) does not include:
  - 530 (i) the costs of preparing for or engaging in a procurement process; or
  - 531 (ii) contract negotiation or drafting costs.

532 (94) "Vendor":  
 533 (a) means a person who is seeking to enter into a contract with a procurement unit to  
 534 provide a procurement item; and

- 535 (b) includes:
  - 536 (i) a bidder;
  - 537 (ii) an offeror;
  - 538 (iii) an approved vendor;
  - 539 (iv) a design professional; and
  - 540 (v) a person who submits an unsolicited proposal under Section [63G-6a-712](#).

541 Section 2. Section **63G-6a-106** is amended to read:

542 **63G-6a-106. Independent procurement units.**

543 (1) An independent procurement unit may, without the supervision, interference,  
 544 oversight, control, or involvement of the division or the chief procurement officer, but in  
 545 accordance with the requirements of this chapter:

- 546 (a) engage in a standard procurement process;
- 547 (b) acquire a procurement item under an exception, as provided in this chapter, to the  
 548 requirement to use a standard procurement process; or
- 549 (c) otherwise engage in an act authorized or required by this chapter.

550 (2) Notwithstanding Subsection (1)[;]:

551 (a) an independent procurement unit may agree in writing with the division to extend  
 552 the authority of the division or the chief procurement officer to the procurement unit, as  
 553 provided in the agreement[-]; and

554 (b) an independent procurement unit that is a school district or public school may agree

555 in writing with the State Board of Education to extend the authority of the State Board of  
556 Education to the school district or public school, as provided in the agreement.

557 (3) With respect to a procurement or contract over which an independent procurement  
558 unit's procurement official has authority, the procurement official may:

559 (a) manage and supervise the procurement to ensure to the extent practicable that  
560 taxpayers receive the best value;

561 (b) prepare and issue standard specifications for procurement items;

562 (c) review contracts, coordinate contract compliance, conduct contract audits, and  
563 approve change orders;

564 (d) delegate duties and authority to an employee of the procurement unit, as the  
565 independent procurement unit's procurement official considers appropriate;

566 (e) for the procurement official of an executive branch procurement unit that is an  
567 independent procurement unit, coordinate with the Division of Technology Services, created in  
568 Section [63A-16-103](#), with respect to the procurement unit's procurement of information  
569 technology services;

570 (f) correct, amend, or cancel a procurement at any stage of the procurement process if  
571 the procurement is out of compliance with this chapter or a rule adopted by the rulemaking  
572 authority;

573 (g) attempt to resolve a contract dispute in coordination with the legal counsel of the  
574 independent procurement unit; and

575 (h) at any time during the term of a contract awarded by the independent procurement  
576 unit, correct or amend a contract to bring it into compliance or cancel the contract:

577 (i) if the procurement official determines that correcting, amending, or canceling the  
578 contract is in the best interest of the procurement unit; and

579 (ii) after consulting with, as applicable, the attorney general's office or the procurement  
580 unit's legal counsel.

581 (4) The attorney general may, in accordance with the provisions of this chapter, but  
582 without involvement by the division or the chief procurement officer:

583 (a) retain outside counsel, subject to Section [67-5-33](#) if the attorney general retains  
584 outside counsel under a contingent fee contract, as defined in that section; or

585 (b) procure litigation support services, including retaining an expert witness.

586 (5) An independent procurement unit that is not represented by the attorney general's  
587 office may, in accordance with the provisions of this chapter, but without involvement by the  
588 division or the chief procurement officer:

589 (a) retain outside counsel; or

590 (b) procure litigation support services, including retaining an expert witness.

591 (6) The state auditor's office may, in accordance with the provisions of this chapter, but  
592 without involvement by the division or the chief procurement officer, procure audit services.

593 (7) The state treasurer may, in accordance with the provisions of this chapter, but  
594 without involvement by the division or the chief procurement officer, procure:

595 (a) deposit services; and

596 (b) services related to issuing bonds.

597 Section 3. Section **63G-6a-2501** is enacted to read:

598 **Part 25. Education Procurement Unit False Claims**

599 **63G-6a-2501. Definitions.**

600 As used in this part:

601 (1) (a) "Claim" means any request or demand, whether under a contract or otherwise,  
602 for money or property and whether an educational procurement unit has title to the money or  
603 property, that:

604 (i) is presented to an officer, employee, or agent of the educational procurement unit;  
605 or

606 (ii) is made to a contractor, grantee, or other recipient, if the money or property is to be  
607 spent or used on the educational procurement unit's behalf or to advance an educational  
608 procurement unit's program or interest, and if the educational procurement unit:

609 (A) provides or has provided any portion of the money or property requested or  
610 demanded; or

611 (B) will reimburse such contractor, grantee, or other recipient for any portion of the  
612 money or property which is requested or demanded.

613 (b) "Claim" does not include a request or demand for money or property that an  
614 educational procurement unit has paid to an individual as compensation for employment or as  
615 an income subsidy with no restrictions on that individual's use of the money or property.

616 (2) "Knowing" and "knowingly" means that a person, with respect to information:

617 (a) has actual knowledge of the information; and

618 (b) acts in deliberate ignorance of the truth or falsity of the information.

619 (3) "Material" means having a natural tendency to influence, or be capable of  
620 influencing, the payment or receipt of money or property.

621 (4) (a) "Obligation" means an established duty, arising from an express or implied  
622 contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar  
623 relationship, from statute or regulation, or from the retention of any overpayment.

624 (b) "Obligation" includes a fixed duty.

625 Section 4. Section **63G-6a-2502** is enacted to read:

626 **63G-6a-2502. Liability for certain acts.**

627 (1) A person is liable to an educational procurement unit for a civil penalty of not less  
628 than \$5,000 and not more than \$10,000, plus three times the amount of damages which the  
629 educational procurement unit sustains, who:

630 (a) knowingly presents, or causes to be presented, a false or fraudulent claim for  
631 payment or approval;

632 (b) knowingly makes, uses, or causes to be made or used, a false record or statement  
633 material to a false or fraudulent claim;

634 (c) conspires to commit a violation of Subsection (1)(a), (b), (d), (e), or (f);

635 (d) has possession, custody, or control of property or money used, or to be used, by the  
636 educational procurement unit and knowingly delivers, or causes to be delivered, less than all of  
637 that money or property;

638 (e) is authorized to make or deliver a document certifying receipt of property used, or  
639 to be used, by the educational procurement unit and, intending to defraud the educational  
640 procurement unit, makes or delivers the receipt without completely knowing that the  
641 information on the receipt is true; or

642 (f) knowingly makes, uses, or causes to be made or used, a false record or statement  
643 material to an obligation to pay or transmit money or property to the educational procurement  
644 unit, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to  
645 pay or transmit money or property to the educational procurement unit.

646 (2) Proof of an action described in Subsection (1) does not require proof of specific  
647 intent to defraud.

648 (3) A court may assess not less than two times the amount of damages that the  
649 educational procurement unit sustains because of a violation of this section, if the court finds  
650 that:

651 (a) the person committing the violation of this section furnished officials of the state  
652 responsible for investigating false claims violations with all information known to such person  
653 about the violation within 30 days after the date on which the defendant first obtained the  
654 information; and

655 (b) at the time the person furnished the educational procurement unit with the  
656 information about the violation, no criminal prosecution, civil action, or administrative action  
657 had commenced under this part with respect to such violation, and the person did not have  
658 actual knowledge of the existence of an investigation into such violation.

659 (4) A person who violates this section is liable to the educational procurement unit for  
660 the costs of a civil action brought to recover any penalty or damages.

661 (5) Any information furnished pursuant to Subsection (3) is exempt from disclosure  
662 under Title 63G, Chapter 2, Government Records Access and Management Act.

663 Section 5. Section **63G-6a-2503** is enacted to read:

664 **63G-6a-2503. Responsibilities of the attorney general -- Actions by private**  
665 **persons.**

666 (1) (a) The attorney general shall diligently investigate a violation under this part.

667 (b) If the attorney general finds that a person violates this part, the attorney general may  
668 bring a civil action under this section against the person.

669 (2) (a) A person may bring a civil action for a violation of this part for the person and  
670 for the educational procurement unit.

671 (b) The action described in Subsection (2)(a):

672 (i) shall be brought in the name of the educational procurement unit; and

673 (ii) may be dismissed only if the court and the attorney general give written consent to  
674 the dismissal and the reasons for consenting.

675 (3) (a) A person who brings a civil action as described in Subsection (2) shall serve on  
676 the educational procurement unit in accordance with Rule 4 of the Utah Rules of Civil  
677 Procedure:

678 (i) a copy of the complaint; and

679 (ii) written disclosure of substantially all material evidence and information the person  
680 possesses.

681 (b) The complaint shall:

682 (i) be filed in camera;

683 (ii) remain under seal for at least 60 days; and

684 (iii) not be served on the defendant until the court so orders.

685 (c) The educational procurement unit may elect to intervene and proceed with the  
686 action within 60 days after the educational procurement unit receives both the complaint and  
687 the material evidence and information.

688 (4) (a) An educational procurement unit may, for good cause shown, move the court  
689 for extensions of the time during which the complaint remains under seal under Subsection (3).

690 (b) A motion described in Subsection (4)(a) may be supported by affidavits or other  
691 submissions in camera.

692 (c) The defendant shall not be required to respond to any complaint filed under this  
693 section until 20 days after the complaint is unsealed and served upon the defendant in  
694 accordance with Rule 4 of the Utah Rules of Civil Procedure.

695 (5) (a) Before the expiration of the 60 day period described in Subsection (3)(b), or any  
696 extensions an educational procurement unit obtains as described in Subsection (4)(a), the  
697 educational procurement unit shall:

698 (i) proceed with the action; or

699 (ii) notify the court that the educational procurement unit declines to take over the  
700 action.

701 (b) If the educational procurement unit declines to take over the action, the person who  
702 initiates the action may conduct the action.

703 (6) When a person brings an action under this section, no person other than the  
704 educational procurement unit may intervene or bring a related action based on the facts  
705 underlying the pending action.

706 Section 6. Section **63G-6a-2504** is enacted to read:

707 **63G-6a-2504. Rights of the parties to qui tam actions.**

708 (1) (a) If an educational procurement unit proceeds with an action as described in  
709 Section [63G-6a-2503](#), the educational procurement unit:

710 (i) has the primary responsibility for prosecuting the action; and  
711 (ii) is not bound by an act of the person who initiates the action.  
712 (b) The person who initiates the action may continue as a party to the action, subject to  
713 the limitations of Subsection (2).  
714 (2) (a) The educational procurement unit may dismiss the action notwithstanding the  
715 objections of the person initiating the action if the educational procurement unit notifies the  
716 person who initiates the action:  
717 (i) that the educational procurement unit filed the action; and  
718 (ii) the court has provided the person with an opportunity for a hearing on the motion.  
719 (b) (i) The educational procurement unit may settle the action with the defendant  
720 notwithstanding the objections of the person initiating the action if the court determines, after a  
721 hearing, that the proposed settlement is fair, adequate, and reasonable under all the  
722 circumstances.  
723 (ii) Upon a showing of good cause, a hearing may be held in camera.  
724 (c) Upon a showing by the educational procurement unit that unrestricted participation  
725 during the course of the litigation by the person initiating the action would interfere with or  
726 unduly delay the educational procurement unit's prosecution of the case, or would be  
727 repetitious, irrelevant, or for purposes of harassment, the court may, in the court's discretion,  
728 impose limitations on the person's participation, including:  
729 (i) limiting the number of witnesses the person may call;  
730 (ii) limiting the length of the testimony of such witnesses;  
731 (iii) limiting the person's cross-examination of witnesses; or  
732 (iv) otherwise limiting the participation by the person in the litigation.  
733 (d) Upon a showing by the defendant that unrestricted participation during the course  
734 of the litigation by the person initiating the action would be for purposes of harassment or  
735 would cause the defendant undue burden or unnecessary expense, the court may limit the  
736 participation by the person in the litigation.  
737 (3) If the educational procurement unit requests, a person who conducts the action  
738 under Subsection [63G-6a-2503\(4\)\(b\)](#) shall:  
739 (a) serve the educational procurement unit with copies of all pleadings filed in the  
740 action; and

741 (b) supply the educational procurement unit with copies of all deposition transcripts at  
742 the educational procurement unit's expense. When a person proceeds with the action, the court,  
743 without limiting the status and rights of the person initiating the action, may nevertheless  
744 permit the educational procurement unit to intervene at a later date upon a showing of good  
745 cause.

746 (4) (a) Regardless of whether the educational procurement unit proceeds with the  
747 action, upon a showing by the educational procurement unit that an action of discovery by the  
748 person who initiates the action interferes with the educational procurement unit's investigation  
749 or prosecution of a criminal or civil matter arising out of the same facts, the court may stay the  
750 discovery for not more than 60 days.

751 (b) The showing described in Subsection (4)(a) shall be conducted in camera.

752 (c) The court may extend the stay of discovery described in Subsection (4)(a) upon a  
753 further showing in camera that:

754 (i) the educational procurement unit has pursued the criminal or civil investigation or  
755 proceedings with reasonable diligence; and

756 (ii) any discovery in the civil action initiated under this part will interfere with the  
757 ongoing criminal or civil investigation or proceedings.

758 (5) (a) Notwithstanding Section [63G-6a-2503](#), the educational procurement unit may  
759 pursue the educational procurement unit's claim through any alternate remedy available to the  
760 educational procurement unit, including any administrative proceeding to determine a civil  
761 penalty.

762 (b) If an educational procurement unit pursues an alternate remedy in a proceeding as  
763 described in Subsection (5)(a), the person initiating an action under this part has the same  
764 rights in the proceeding as the person has under an action under this part.

765 (c) A final finding of fact or conclusion of law in a proceeding described in Subsection  
766 (5)(b) is conclusive on all parties to an action under this part.

767 (d) For purposes of Subsection (5)(c), a finding of fact or conclusion of law is final if:

768 (i) the finding of fact or conclusion of law has been finally determined on appeal to the  
769 appropriate court of the state;

770 (ii) if the time for filing an appeal of the finding of fact or conclusion of law has  
771 expired; or

772 (iii) if the finding of fact or conclusion of law is not subject to judicial review.

773 Section 7. Section **63G-6a-2505** is enacted to read:

774 **63G-6a-2505. Award to qui tam plaintiff.**

775 (1) If an educational procurement unit proceeds with an action as described in  
776 Subsection 63G-6a-2503(4), the person who initiates the action is entitled to, subject to  
777 Subsection (2), at least 15% but not more than 25% of the proceeds of the action or settlement  
778 of the claim, in proportion to the contributions of the person who initiates the action to the  
779 prosecution of the action.

780 (2) (a) Notwithstanding Subsection (1), the court may not award more than 10% of the  
781 proceeds of an action or settlement of a claim to the person who initiates an action under this  
782 part if the court finds that the action is based primarily on disclosures of specific information:

783 (i) relating to allegations or transactions in a:

784 (A) criminal, civil, or administrative hearing; or

785 (B) legislative, administrative, or state auditor report, hearing, audit, or investigation;

786 or

787 (ii) from the news media.

788 (b) The information described in Subsection (2)(a) does not include information the  
789 person who initiates the action provides.

790 (3) The court shall award to a person who receives a payment under Subsection (1) or  
791 (2):

792 (a) reasonable expenses, if the court finds the expenses were necessary; and

793 (b) reasonable attorney fees and costs.

794 (4) (a) If an educational procurement unit declines to take over an action as described  
795 in Subsection 63G-6a-2503(4), the person who initiates the action or settles the claim is  
796 entitled to an amount the court determines is reasonable for collecting the civil penalty and  
797 damages.

798 (b) The amount described in Subsection (4)(a):

799 (i) shall not be less than 25% and not more than 30% of the proceeds of the action or  
800 settlement; and

801 (ii) shall be paid out of the proceeds described in Subsection (4)(b)(i).

802 (5) The court shall award to a person who receives a payment under Subsection (4):

803 (a) reasonable expenses, if the court finds the expenses were necessary; and

804 (b) reasonable attorney fees and costs.

805 (6) (a) Whether the educational procurement unit proceeds with an action under this  
806 part, if the court finds that the person who initiates the action planned or initiated the violation  
807 of this part upon which the action was brought, the court may reduce the share of the proceeds  
808 of the action which the person would otherwise receive under this section.

809 (b) In reducing the share of proceeds as described in Subsection (6)(a), the court shall  
810 take into account the role of the person in advancing the case to litigation and any relevant  
811 circumstances pertaining to the violation.

812 (c) If the person who initiates the action is convicted of criminal conduct arising from  
813 the person's role in the violation of this part:

814 (i) the court shall dismiss the person from the civil action; and

815 (ii) the person may not receive any share of the proceeds of the action.

816 (d) A dismissal described in Subsection (6)(c) may not prejudice the right of the  
817 educational procurement unit to continue the action, represented by the attorney general.

818 (7) If an educational procurement unit declines to take over an action as described in  
819 Subsection [63G-6a-2503](#)(4), and the person who initiates the action conducts the action, the  
820 court may award to the defendant reasonable attorney fees and costs if:

821 (a) the defendant is the prevailing party in the action; and

822 (b) the court finds that the claim of the person who initiates the action was clearly  
823 frivolous, clearly vexatious, or brought primarily for purposes of harassment.

824 (8) An educational procurement unit is not liable for expenses that a person who  
825 initiates an action under this part incurs in bringing an action under this part.

826 Section 8. Section **63G-6a-2506** is enacted to read:

827 **63G-6a-2506. Certain actions barred.**

828 (1) A court of this state has no jurisdiction over an action brought under Section  
829 [63G-6a-2503](#):

830 (a) by a former or present member of the armed forces against a member of the armed  
831 forces arising out of the person's service in the armed forces; or

832 (b) against a member of the Legislature, a member of the judiciary, or a senior  
833 executive branch official if the action is based on evidence or information known to the

834 educational procurement unit when the action was initiated.

835 (2) A person may not bring an action under Section [63G-6a-2503](#) that is based on  
836 allegations or transactions that are the subject of a civil suit or an administrative civil money  
837 penalty proceeding in which the educational procurement unit is already a party.

838 (3) (a) As used in this Subsection (3), "original source" means a person who:

839 (i) prior to a public disclosure described in Subsection (3)(b), has voluntarily disclosed  
840 to the educational procurement unit the information on which allegations or transactions in a  
841 claim are based; or

842 (ii) (A) has knowledge that is independent of and materially adds to the publicly  
843 disclosed allegations or transactions; and

844 (B) voluntarily provides the information to the educational procurement unit before  
845 filing an action under this section.

846 (b) The court shall dismiss an action or claim under this section, unless opposed by the  
847 educational procurement unit, if substantially the same allegations or transactions as alleged in  
848 the action or claim were publicly disclosed:

849 (i) in a criminal, civil, or administrative hearing in which the educational procurement  
850 unit or the educational procurement unit's agent is a party;

851 (ii) in a legislative, state auditor, or other state or local:

852 (A) report;

853 (B) hearing;

854 (C) audit; or

855 (D) investigation; or

856 (iii) in the news media, unless:

857 (A) the action is brought by the attorney general; or

858 (B) the person who initiates the action is an original source of the information.

859 Section 9. Section **63G-6a-2507** is enacted to read:

860 **63G-6a-2507. Relief from retaliatory actions.**

861 (1) As used in this section:

862 (a) "Employee" means an employee of an educational procurement unit.

863 (b) "Retaliation" means the discharge, demotion, suspension, threatening, harassment,  
864 or discrimination in the terms and conditions of an employee's employment.

865           (2) An employee is entitled to all relief necessary to make the employee whole for  
866 retaliation against the employee for the employee's or another person's:

867           (a) lawful acts in furtherance of an action under this part; or

868           (b) efforts to stop a violation of this part.

869           (3) Relief described in Subsection (2) includes:

870           (a) reinstatement with the same seniority status that employee would have had but for  
871 the retaliation;

872           (b) back pay and interest on the back pay; and

873           (c) compensation for any special damages sustained as a result of the retaliation,  
874 including litigation costs and reasonable attorney fees.

875           (4) An action under this section may be brought in the appropriate district court of this  
876 state for the relief provided in this section.