

Representative Jordan D. Teuscher proposes the following substitute bill:

EDUCATION FALSE CLAIMS AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jordan D. Teuscher

Senate Sponsor: Michael K. McKell

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, 422

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

63G-6a-2105, as last amended by Laws of Utah 2016, Chapters 348, 355



26 ENACTS:

27 [63G-6a-2501](#), Utah Code Annotated 1953

28 [63G-6a-2502](#), Utah Code Annotated 1953

29 [63G-6a-2503](#), Utah Code Annotated 1953

30 [63G-6a-2504](#), Utah Code Annotated 1953

31 [63G-6a-2505](#), Utah Code Annotated 1953

32 [63G-6a-2507](#), Utah Code Annotated 1953

33

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] charter school, the [board] State Board of
443 Education, except to the extent of a school district's or charter school's own nonadministrative
444 rules that do not conflict with the provisions of this chapter or administrative rules that the
445 State Board of Education enacts in accordance with Title 63G, Chapter 3, Utah Administrative
446 Rulemaking Act;
- 447 (f) for a state institution of higher education, the Utah Board of Higher Education;
448 (g) for the State Board of Education or the Utah Schools for the Deaf and the Blind, the
449 State Board of Education;
- 450 (h) for a public transit district, the chief executive of the public transit district;
- 451 (i) for a local district other than a public transit district or for a special service district,
452 the board, except to the extent that the board of trustees of the local district or the governing
453 body of the special service district makes its own rules:
- 454 (i) with respect to a subject addressed by board rules; or
455 (ii) that are in addition to board rules;
- 456 (j) for the Utah Educational Savings Plan, created in Section 53B-8a-103, the Utah
457 Board of Higher Education;
- 458 (k) for the School and Institutional Trust Lands Administration, created in Section
459 53C-1-201, the School and Institutional Trust Lands Board of Trustees;

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

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

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

465 (78) "Service":

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

468 (b) includes a professional service; and

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

471 (79) "Small purchase process" means the procurement process described in Section
472 63G-6a-506.

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

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

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

479 (83) "Solicitation response" means:

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

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

482 (c) a statement of qualifications submitted in response to a request for statement of
483 qualifications.

484 (84) "Special service district" means the same as that term is defined in Section
485 17D-1-102.

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

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

490 (b) preparing a procurement item for delivery.

491 (86) "Standard procurement process" means:

- 492 (a) the bidding process;
- 493 (b) the request for proposals process;
- 494 (c) the approved vendor list process;
- 495 (d) the small purchase process; or
- 496 (e) the design professional procurement process.

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

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

501 (89) "Subcontractor":

502 (a) means a person under contract to perform part of a contractual obligation under the
503 control of the contractor, whether the person's contract is with the contractor directly or with
504 another person who is under contract to perform part of a contractual obligation under the
505 control of the contractor; and

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

508 (90) "Technology" means the same as "information technology," as defined in Section
509 [63A-16-102](#).

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

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

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

517 (93) "Transitional costs":

518 (a) means the costs of changing:

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

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

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

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

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

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

544 **63G-6a-106. Independent procurement units.**

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

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

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

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

556 **(b) an independent procurement unit that is a school district or charter school may**
557 **agree in writing with the State Board of Education to extend the authority of the State Board of**
558 **Education to the school district or charter school, as provided in the agreement.**

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

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

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

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

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

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

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

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

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

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

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

583 (4) The attorney general may, in accordance with the provisions of this chapter, but

584 without involvement by the division or the chief procurement officer:

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

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

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

591 (a) retain outside counsel; or

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

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

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

597 (a) deposit services; and

598 (b) services related to issuing bonds.

599 Section 3. Section 63G-6a-2105 is amended to read:

600 **63G-6a-2105. Cooperative procurements -- Contracts with federal government --**
601 **Regional solicitations.**

602 (1) The chief procurement officer may, in accordance with the requirements of this
603 chapter, enter into a cooperative procurement, and a contract that is awarded as a result of a
604 cooperative procurement, with:

605 (a) another state;

606 (b) a cooperative purchasing organization; or

607 (c) a public entity inside or outside the state.

608 (2) A public entity, nonprofit organization, or, as permitted under federal law, an
609 agency of the federal government, may obtain a procurement item from a state cooperative
610 contract or a contract awarded by the chief procurement officer under Subsection (1), without
611 signing a participating addendum if the solicitation issued by the chief procurement officer to
612 obtain the contract includes a statement indicating that the resulting contract will be issued for
613 the benefit of public entities and, as applicable, nonprofit organizations and agencies of the
614 federal government.

615 (3) Except as provided in Section 63G-6a-506, or as otherwise provided in this chapter,
616 an executive branch procurement unit may not obtain a procurement item from a source other
617 than a state cooperative contract or a contract awarded by the chief procurement officer under
618 Subsection (1), if the procurement item is available under a state cooperative contract or a
619 contract awarded by the chief procurement officer under Subsection (1).

620 (4) A Utah procurement unit may:

621 (a) contract with the federal government without going through a standard procurement
622 process or an exception to a standard procurement process, described in Part 8, Exceptions to
623 Procurement Requirements, if the procurement item obtained under the contract is provided:

624 (i) directly by the federal government and not by a person contracting with the federal
625 government; or

626 (ii) by a person under contract with the federal government that obtained the contract in
627 a manner that substantially complies with the provisions of this chapter;

628 (b) participate in, sponsor, conduct, or administer a cooperative procurement with
629 another Utah procurement unit or another public entity in Utah, if:

630 (i) each party unit involved in the cooperative procurement enters into an agreement
631 describing the rights and duties of each party;

632 (ii) the procurement is conducted, and the contract awarded, in accordance with the
633 requirements of this chapter;

634 (iii) the solicitation:

635 (A) clearly indicates that the procurement is a cooperative procurement; and

636 (B) identifies each party that may purchase under the resulting contract; and

637 (iv) each party involved in the cooperative procurement signs a participating addendum
638 describing its rights and obligations in relation to the resulting contract; or

639 (c) purchase under, or otherwise participate in, an agreement or contract of a
640 cooperative purchasing organization, if:

641 (i) each party involved in the cooperative procurement enters into an agreement
642 describing the rights and duties of each party;

643 (ii) the procurement was conducted in accordance with the requirements of this
644 chapter;

645 (iii) the solicitation:

646 (A) clearly indicates that the procurement is a cooperative procurement; and
647 (B) identifies each party that may purchase under the resulting contract; and
648 (iv) each party involved in the cooperative procurement signs a participating addendum
649 describing its rights and obligations in relation to the resulting contract.

650 (5) A procurement unit may not obtain a procurement item under a contract that results
651 from a cooperative procurement described in Subsection (4), unless the procurement unit:

652 (a) is identified under Subsection (4)(b)(iii)(B) or (4)(c)(iii)(B); and

653 (b) signs a participating addendum to the contract as required by this section.

654 (6) A procurement unit, other than a legislative procurement unit or a judicial
655 procurement unit, may not obtain a procurement item under a contract held by the United
656 States General Services Administration, unless, based upon documentation provided by the
657 procurement unit, the Director of the State Division of Purchasing and General Services
658 determines in writing that the United States General Services Administration procured the
659 contract in a manner that substantially complies with the provisions of this chapter.

660 (7) (a) As used in this Subsection (7), "regional solicitation" means a solicitation issued
661 by the chief procurement officer for the procurement of a procurement item within a specified
662 geographical region of the state.

663 (b) In addition to any other duty or authority under this section, the chief procurement
664 officer shall:

665 (i) after considering board recommendations, develop a plan for issuing regional
666 solicitations; and

667 (ii) after developing a plan, issue regional solicitations for procurement items in
668 accordance with the plan and this chapter.

669 (c) A plan under Subsection (7)(b) shall:

670 (i) define the proposed regional boundaries for regional solicitations;

671 (ii) specify the types of procurement items for which a regional solicitation may be
672 issued; and

673 (iii) identify the regional solicitations that the chief procurement officer plans to issue.

674 (d) A regional solicitation shall require that a person responding to the solicitation offer
675 similar warranties and submit to similar obligations as are standard under other state
676 cooperative contracts.

677 (e) Except as authorized by the chief procurement officer, a procurement item that is
 678 available under a state cooperative contract may not be provided under a contract pursuant to a
 679 regional solicitation until after the expiration of the state cooperative contract.

680 (8) The State Board of Education may, in accordance with the requirements of this
 681 chapter, enter into a cooperative procurement that is available to school districts and charter
 682 schools if the contract is awarded as a result of a cooperative procurement.

683 (9) A school district or public school may obtain a procurement item from a
 684 cooperative contract awarded by the State Board of Education under Subsection (8) without
 685 signing a participating addendum if the solicitation issued by the State Board of Education to
 686 obtain the contract includes a statement indicating that the resulting contract will be issued for
 687 the benefit of school districts and public schools.

688 Section 4. Section **63G-6a-2501** is enacted to read:

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

690 **63G-6a-2501. Definitions.**

691 As used in this part:

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

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

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

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

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

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

707 (2) (a) "Educational procurement unit" means the same as that term is defined in

708 Section 63G-6a-103.

709 (b) "Educational procurement unit" does not include an institution of higher education
710 of the state described in Section 53B-1-102.

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

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

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

714 (4) "Material" means having a natural tendency to influence, or be capable of
715 influencing, the payment or receipt of money or property.

716 Section 5. Section **63G-6a-2502** is enacted to read:

717 **63G-6a-2502. Liability for certain acts.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

755 **63G-6a-2503. Responsibilities of the attorney general -- Actions by private**
756 **persons.**

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

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

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

762 (b) If a person brings a civil action under Subsection (2)(a), the person shall bring the
763 action in the name of the educational procurement unit.

764 (3) An educational procurement unit may intervene in an action described in this
765 section that is related to the educational procurement unit.

766 Section 7. Section **63G-6a-2504** is enacted to read:

767 **63G-6a-2504. Rights of the parties to alternate remedies.**

768 (1) Notwithstanding Section [63G-6a-2503](#), an educational procurement unit may
769 pursue the educational procurement unit's claim through any alternate remedy available to the

770 educational procurement unit, including any administrative proceeding to determine a civil
771 penalty.

772 (2) If an educational procurement unit pursues an alternate remedy in a proceeding as
773 described in Subsection (1), the person initiating an action under this part has the same rights in
774 the proceeding as the person has under an action under this part.

775 Section 8. Section **63G-6a-2505** is enacted to read:

776 **63G-6a-2505. Certain actions barred.**

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

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

781 **63G-6a-2507. Relief from retaliatory actions.**

782 (1) As used in this section:

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

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

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

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

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

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

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

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

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

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