

# HB0118S03 compared with HB0118

~~{deleted text}~~ shows text that was in HB0118 but was deleted in HB0118S03.

inserted text shows text that was not in HB0118 but was inserted into HB0118S03.

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~~{EDUCATION FALSE CLAIMS}~~ Representative Jordan D. Teuscher proposes the following substitute bill:

## EDUCATION PROCUREMENT AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jordan D. Teuscher**

Senate Sponsor: ~~{\_\_\_\_\_}~~ Michael K. McKell

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### 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:

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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**~~

~~————~~ ~~**63G-6a-2503, Utah Code Annotated 1953**~~

~~————~~ ~~**63G-6a-2504, Utah Code Annotated 1953**~~

~~————~~ ~~**63G-6a-2505, Utah Code Annotated 1953**~~

~~————~~ ~~**63G-6a-2506, Utah Code Annotated 1953**~~

~~————~~ ~~**63G-6a-2507, Utah Code Annotated 1953**~~; **63G-6a-2105, as last amended by Laws of Utah 2016, Chapters 348, 355**

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

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

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

As used in this chapter:

- (1) "Approved vendor" means a person who has been approved for inclusion on an approved vendor list through the approved vendor list process.
- (2) "Approved vendor list" means a list of approved vendors established under Section 63G-6a-507.
- (3) "Approved vendor list process" means the procurement process described in Section 63G-6a-507.
- (4) "Bidder" means a person who submits a bid or price quote in response to an invitation for bids.
- (5) "Bidding process" means the procurement process described in Part 6, Bidding.
- (6) "Board" means the Utah State Procurement Policy Board, created in Section 63G-6a-202.
- (7) "Change directive" means a written order signed by the procurement officer that

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directs the contractor to suspend work or make changes, as authorized by contract, without the consent of the contractor.

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

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

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

(a) except:

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

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

(b) including:

(i) preparing any solicitation document;

(ii) appointing an evaluation committee;

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

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

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

(vi) contract administration.

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

(12) "Construction project":

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

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

(13) "Construction manager/general contractor":

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

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

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

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

(14) "Construction subcontractor":

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

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

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

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

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

(a) implementing the contract;

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

(c) executing change orders;

(d) processing contract amendments;

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

(f) curing contract errors and deficiencies;

(g) terminating a contract;

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

(i) computing payments under the contract; and

(j) closing out a contract.

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

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

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- (a) more than one procurement unit; or
- (b) a procurement unit and a cooperative purchasing organization.

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

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

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

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

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

(24) "Design professional" means:

- (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects Licensing Act;
- (b) an individual licensed as a professional engineer or professional land surveyor under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act; or
- (c) an individual certified as a commercial interior designer under Title 58, Chapter 86, State Certification of Commercial Interior Designers Act.

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

(26) "Design professional services" means:

- (a) professional services within the scope of the practice of architecture as defined in Section 58-3a-102;
- (b) professional engineering as defined in Section 58-22-102;
- (c) master planning and programming services; or
- (d) services within the scope of the practice of commercial interior design, as defined

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in Section 58-86-102.

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

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

(29) "Educational procurement unit" means:

- (a) a school district;
- (b) a public school, including a local school board or a charter school;
- (c) the Utah Schools for the Deaf and the Blind;
- (d) the Utah Education and Telehealth Network;
- (e) an institution of higher education of the state described in Section 53B-1-102; or
- (f) the State Board of Education.

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

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

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

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

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

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

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

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

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

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

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

(36) "Immaterial error":

(a) means an irregularity or abnormality that is:

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

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

(b) includes:

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

(ii) a typographical error;

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

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

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

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

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

(ii) provides a maximum purchase limit.

(38) "Independent procurement unit" means:

(a) (i) a legislative procurement unit;

(ii) a judicial branch procurement unit;

(iii) an educational procurement unit;

(iv) a local government procurement unit;

(v) a conservation district;

(vi) a local building authority;

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- (vii) a local district;
- (viii) a public corporation;
- (ix) a special service district; or
- (x) the Utah Communications Authority, established in Section 63H-7a-201;
- (b) the facilities division, but only to the extent of the procurement authority provided under Title 63A, Chapter 5b, Administration of State Facilities;
- (c) the attorney general, but only to the extent of the procurement authority provided under Title 67, Chapter 5, Attorney General;
- (d) the Department of Transportation, but only to the extent of the procurement authority provided under Title 72, Transportation Code; or
- (e) any other executive branch department, division, office, or entity that has statutory procurement authority outside this chapter, but only to the extent of that statutory procurement authority.

(39) "Invitation for bids":

(a) means a document used to solicit:

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

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

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

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

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

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

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

(41) "Judicial procurement unit" means:

(a) the Utah Supreme Court;

(b) the Utah Court of Appeals;

(c) the Judicial Council;

(d) a state judicial district; or

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

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

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

(43) "Legislative procurement unit" means:

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

support.

(44) "Local building authority" means the same as that term is defined in Section 17D-2-102.

(45) "Local district" means the same as that term is defined in Section 17B-1-102.

(46) "Local government procurement unit" means:

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

- (i) the county or municipality adopts a procurement code by ordinance; or
- (ii) the project entity adopts a procurement code through the process described in

Section 11-13-316;

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

(ii) a project entity that has adopted this entire chapter through the process described in Subsection 11-13-316; or

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

- (i) a term in the ordinance is used in the adopted chapter; or
- (ii) a term in the ordinance is used in the language a project entity adopts in its

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procurement code through the process described in Section 11-13-316.

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

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

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

(50) "Nonadopting local government procurement unit" means:

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

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

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

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

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

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

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

(56) "Procurement official" means:

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

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

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

(d) for a local government procurement unit:

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

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- (ii) an individual or body designated by the local government procurement unit;
  - (e) for a local district, the board of trustees of the local district or the board of trustees' designee;
  - (f) for a special service district, the governing body of the special service district or the governing body's designee;
  - (g) for a local building authority, the board of directors of the local building authority or the board of directors' designee;
  - (h) for a conservation district, the board of supervisors of the conservation district or the board of supervisors' designee;
  - (i) for a public corporation, the board of directors of the public corporation or the board of directors' designee;
  - (j) for a school district or any school or entity within a school district, the board of the school district or the board's designee;
  - (k) for a charter school, the individual or body with executive authority over the charter school or the designee of the individual or body;
  - (l) for an institution of higher education described in Section 53B-2-101, the president of the institution of higher education or the president's designee;
  - (m) for the State Board of Education, the State Board of Education or the State Board of Education's designee;
  - (n) for the Utah Board of Higher Education, the Commissioner of Higher Education or the designee of the Commissioner of Higher Education;
  - (o) for the Utah Communications Authority, established in Section 63H-7a-201, the executive director of the Utah Communications Authority or the executive director's designee;
- or
- (p) (i) for the facilities division, and only to the extent of procurement activities of the facilities division as an independent procurement unit under the procurement authority provided under Title 63A, Chapter 5b, Administration of State Facilities, the director of the facilities division or the director's designee;
  - (ii) for the attorney general, and only to the extent of procurement activities of the attorney general as an independent procurement unit under the procurement authority provided under Title 67, Chapter 5, Attorney General, the attorney general or the attorney general's

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designee;

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

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

(57) "Procurement unit":

(a) means:

(i) a legislative procurement unit;

(ii) an executive branch procurement unit;

(iii) a judicial procurement unit;

(iv) an educational procurement unit;

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

(vi) a local government procurement unit;

(vii) a local district;

(viii) a special service district;

(ix) a local building authority;

(x) a conservation district; and

(xi) a public corporation; and

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

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

(a) accounting;

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- (b) administrative law judge service;
- (c) architecture;
- (d) construction design and management;
- (e) engineering;
- (f) financial services;
- (g) information technology;
- (h) the law;
- (i) medicine;
- (j) psychiatry; or
- (k) underwriting.

(59) "Protest officer" means:

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

- (i) the procurement official;
- (ii) the procurement official's designee who is an employee of the procurement unit; or
- (iii) a person designated by rule made by the rulemaking authority; or

(b) for a procurement unit other than an independent procurement unit, the chief procurement officer or the chief procurement officer's designee who is an employee of the division.

(60) "Public corporation" means the same as that term is defined in Section 63E-1-102.

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

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

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

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

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

(66) "Public-private partnership" means an arrangement or agreement, occurring on or after January 1, 2017, between a procurement unit and one or more contractors to provide for a public need through the development or operation of a project in which the contractor or

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contractors share with the procurement unit the responsibility or risk of developing, owning, maintaining, financing, or operating the project.

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

(a) is responsible; and

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

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

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

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

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

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

(73) "Requirements contract" means a contract:

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

(b) that:

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

(ii) provides a maximum purchase limit.

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

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

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

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

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solicitation.

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

(77) "Rulemaking authority" means:

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

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

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

(A) for the facilities division, the facilities division;

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

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

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

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

(d) for a local government procurement unit:

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

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

(e) for a school district or a [public] charter school, ~~the~~ [board] State Board of Education, except to the extent of a school district's or charter school's own nonadministrative rules that do not conflict with the provisions of this chapter ~~or~~ or administrative rules that the State Board of Education enacts in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

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

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

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

(i) for a local district other than a public transit district or for a special service district, the board, except to the extent that the board of trustees of the local district or the governing

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body of the special service district makes its own rules:

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

(ii) that are in addition to board rules;

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

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

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

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

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

(78) "Service":

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

(b) includes a professional service; and

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

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

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

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

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

(83) "Solicitation response" means:

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

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

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

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

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

- (a) a requirement for inspecting or testing a procurement item; or
- (b) preparing a procurement item for delivery.

(86) "Standard procurement process" means:

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

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

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

(89) "Subcontractor":

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

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

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

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

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

- (a) the actual cost of direct labor at specified hourly rates;
- (b) the actual cost of materials and equipment usage; and

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

(93) "Transitional costs":

(a) means the costs of changing:

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

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

(b) includes:

(i) training costs;

(ii) conversion costs;

(iii) compatibility costs;

(iv) costs associated with system downtime;

(v) disruption of service costs;

(vi) staff time necessary to implement the change;

(vii) installation costs; and

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

(c) does not include:

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

(ii) contract negotiation or drafting costs.

(94) "Vendor":

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

(b) includes:

(i) a bidder;

(ii) an offeror;

(iii) an approved vendor;

(iv) a design professional; and

(v) a person who submits an unsolicited proposal under Section 63G-6a-712.

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

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

(1) An independent procurement unit may, without the supervision, interference,

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oversight, control, or involvement of the division or the chief procurement officer, but in accordance with the requirements of this chapter:

(a) engage in a standard procurement process;

(b) acquire a procurement item under an exception, as provided in this chapter, to the requirement to use a standard procurement process; or

(c) otherwise engage in an act authorized or required by this chapter.

(2) Notwithstanding Subsection (1)[7]:

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

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

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

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

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

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

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

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

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

(g) attempt to resolve a contract dispute in coordination with the legal counsel of the

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independent procurement unit; and

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

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

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

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

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

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

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

(a) retain outside counsel; or

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

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

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

(a) deposit services; and

(b) services related to issuing bonds.

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

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

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

(a) another state;

(b) a cooperative purchasing organization; or

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

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

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

(4) A Utah procurement unit may:

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

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

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

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

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

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

(iii) the solicitation:

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

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

(iv) each party involved in the cooperative procurement signs a participating addendum

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describing its rights and obligations in relation to the resulting contract; or

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

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

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

(iii) the solicitation:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~{Section 3. Section 63G-6a-2501 is enacted to read:~~

### ~~Part 25. Education Procurement Unit False Claims~~

#### ~~63G-6a-2501. Definitions.~~

~~As used in this part:~~

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

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

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

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

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

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

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

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~~— (a) has actual knowledge of the information; and~~

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

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

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

~~— (b) "Obligation" includes a fixed duty.~~

~~— Section 4. Section 63G-6a-2502 is enacted to read:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~—— **63G-6a-2503. Responsibilities of the attorney general -- Actions by private persons:**~~

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

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

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

~~—— (b) The action described in Subsection (2)(a):~~

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

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

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

~~—— (i) a copy of the complaint; and~~

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~~—— (ii) written disclosure of substantially all material evidence and information the person possesses;~~

~~—— (b) The complaint shall:~~

~~—— (i) be filed in camera;~~

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

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

~~—— (c) The educational procurement unit may elect to intervene and proceed with the action within 60 days after the educational procurement unit receives both the complaint and the material evidence and information:~~

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

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

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

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

~~—— (i) proceed with the action; or~~

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

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

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

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

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

~~—— (1) (a) If an educational procurement unit proceeds with an action as described in Section 63G-6a-2503, the educational procurement unit:~~

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- ~~—— (i) has the primary responsibility for prosecuting the action; and~~
- ~~—— (ii) is not bound by an act of the person who initiates the action.~~
- ~~—— (b) The person who initiates the action may continue as a party to the action, subject to the limitations of Subsection (2):~~
- ~~—— (2) (a) The educational procurement unit may dismiss the action notwithstanding the objections of the person initiating the action if the educational procurement unit notifies the person who initiates the action:~~
  - ~~—— (i) that the educational procurement unit filed the action; and~~
  - ~~—— (ii) the court has provided the person with an opportunity for a hearing on the motion.~~
- ~~—— (b) (i) The educational procurement unit may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances:~~
  - ~~—— (ii) Upon a showing of good cause, a hearing may be held in camera.~~
- ~~—— (c) Upon a showing by the educational procurement unit that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the educational procurement unit's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in the court's discretion, impose limitations on the person's participation, including:~~
  - ~~—— (i) limiting the number of witnesses the person may call;~~
  - ~~—— (ii) limiting the length of the testimony of such witnesses;~~
  - ~~—— (iii) limiting the person's cross-examination of witnesses; or~~
  - ~~—— (iv) otherwise limiting the participation by the person in the litigation.~~
- ~~—— (d) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.~~
- ~~—— (3) If the educational procurement unit requests, a person who conducts the action under Subsection 63G-6a-2503(4)(b) shall:~~
  - ~~—— (a) serve the educational procurement unit with copies of all pleadings filed in the action; and~~

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

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

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

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

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

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

~~—— (5) (a) Notwithstanding Section 63G-6a-2503, the educational procurement unit may pursue the educational procurement unit's claim through any alternate remedy available to the educational procurement unit, including any administrative proceeding to determine a civil penalty.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

~~or~~

~~(ii) from the news media:~~

~~(b) The information described in Subsection (2)(a) does not include information the person who initiates the action provides:~~

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

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

~~(b) reasonable attorney fees and costs:~~

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

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

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

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

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

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- ~~— (a) reasonable expenses, if the court finds the expenses were necessary; and~~
- ~~— (b) reasonable attorney fees and costs;~~
- ~~— (6) (a) Whether the educational procurement unit proceeds with an action under this part, if the court finds that the person who initiates the action planned or initiated the violation of this part upon which the action was brought, the court may reduce the share of the proceeds of the action which the person would otherwise receive under this section:~~
- ~~— (b) In reducing the share of proceeds as described in Subsection (6)(a), the court shall take into account the role of the person in advancing the case to litigation and any relevant circumstances pertaining to the violation:~~
- ~~— (c) If the person who initiates the action is convicted of criminal conduct arising from the person's role in the violation of this part:~~
- ~~— (i) the court shall dismiss the person from the civil action; and~~
- ~~— (ii) the person may not receive any share of the proceeds of the action.~~
- ~~— (d) A dismissal described in Subsection (6)(c) may not prejudice the right of the educational procurement unit to continue the action, represented by the attorney general.~~
- ~~— (7) If an educational procurement unit declines to take over an action as described in Subsection 63G-6a-2503(4), and the person who initiates the action conducts the action, the court may award to the defendant reasonable attorney fees and costs if:~~
- ~~— (a) the defendant is the prevailing party in the action; and~~
- ~~— (b) the court finds that the claim of the person who initiates the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.~~
- ~~— (8) An educational procurement unit is not liable for expenses that a person who initiates an action under this part incurs in bringing an action under this part.~~
- ~~— Section 8. Section **63G-6a-2506** is enacted to read:~~
- ~~— **63G-6a-2506. Certain actions barred.**~~
- ~~— (1) A court of this state has no jurisdiction over an action brought under Section 63G-6a-2503:~~
- ~~— (a) by a former or present member of the armed forces against a member of the armed forces arising out of the person's service in the armed forces; or~~
- ~~— (b) against a member of the Legislature, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the~~

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~~educational procurement unit when the action was initiated:~~

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

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

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

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

~~—— (B) voluntarily provides the information to the educational procurement unit before filing an action under this section:~~

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

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

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

~~—— (A) report;~~

~~—— (B) hearing;~~

~~—— (C) audit; or~~

~~—— (D) investigation; or~~

~~—— (iii) in the news media, unless:~~

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

~~—— (B) the person who initiates the action is an original source of the information:~~

~~—— Section 9. Section 63G-6a-2507 is enacted to read:~~

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

~~—— (1) As used in this section:~~

~~—— (a) "Employee" means an employee of an educational procurement unit:~~

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

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

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

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

~~— (3) Relief described in Subsection (2) includes:~~

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

~~— (b) back pay and interest on the back pay; and~~

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

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

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

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