

1 **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

2 **PROCUREMENT AMENDMENTS**

3 2023 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Andrew Stoddard**

6 Senate Sponsor: David G. Buxton

7

8 **LONG TITLE**

9 **General Description:**

10 This bill addresses procurements by the Department of Health and Human Services
11 (department).

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ creates and modifies definitions;
- 15 ▶ provides that the department is an independent procurement unit under the Utah
16 Procurement Code for certain human services procurements;
- 17 ▶ exempts the department from the Utah Procurement Code for certain medical
18 supply purchases;
- 19 ▶ addresses the following for human services procurements:
 - 20 • public notice;
 - 21 • protest appeals;
 - 22 • direct purchases without solicitation;
 - 23 • invitations for contract awards through an open enrollment, noncompetitive
24 process; and
 - 25 • determining debarment and suspension;
- 26 ▶ authorizes the executive director of the department to appoint a procurement
27 advisory council;



- 28 ▶ grants administrative rulemaking authority; and
- 29 ▶ makes technical and conforming changes.

30 **Money Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **63G-6a-103**, as last amended by Laws of Utah 2022, Chapters 421, 422

37 **63G-6a-107.6**, as last amended by Laws of Utah 2021, Chapter 179

38 **63G-6a-107.7**, as enacted by Laws of Utah 2020, Chapter 257

39 **63G-6a-1702**, as last amended by Laws of Utah 2017, Chapter 348

40 ENACTS:

41 **63G-6a-2501**, Utah Code Annotated 1953

42 **63G-6a-2502**, Utah Code Annotated 1953

43 **63G-6a-2503**, Utah Code Annotated 1953

44 **63G-6a-2504**, Utah Code Annotated 1953

45 **63G-6a-2505**, Utah Code Annotated 1953

46 **63G-6a-2506**, Utah Code Annotated 1953

47 **63G-6a-2507**, Utah Code Annotated 1953



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

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

51 **63G-6a-103. Definitions.**

52 As used in this chapter:

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

55 (2) "Approved vendor list" means a list of approved vendors established under Section
56 **63G-6a-507**.

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

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

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

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

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

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

70 (9) "Chief procurement officer" means the individual appointed under Section
71 [63A-2-102](#).

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

74 (a) except:

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

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

77 (b) including:

78 (i) preparing any solicitation document;

79 (ii) appointing an evaluation committee;

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

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

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

85 (vi) contract administration.

86 (11) "Conservation district" means the same as that term is defined in Section
87 [17D-3-102](#).

88 (12) "Construction project":

89 (a) means a project for the construction, renovation, alteration, improvement, or repair

90 of a public facility on real property, including all services, labor, supplies, and materials for the
91 project; and

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

94 (13) "Construction manager/general contractor":

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

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

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

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

103 (14) "Construction subcontractor":

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

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

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

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

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

114 (a) implementing the contract;

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

117 (c) executing change orders;

118 (d) processing contract amendments;

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

120 (f) curing contract errors and deficiencies;

- 121 (g) terminating a contract;
- 122 (h) measuring or evaluating completed work and contractor performance;
- 123 (i) computing payments under the contract; and
- 124 (j) closing out a contract.
- 125 (17) "Contractor" means a person who is awarded a contract with a procurement unit.
- 126 (18) "Cooperative procurement" means procurement conducted by, or on behalf of:
 - 127 (a) more than one procurement unit; or
 - 128 (b) a procurement unit and a cooperative purchasing organization.
- 129 (19) "Cooperative purchasing organization" means an organization, association, or
- 130 alliance of purchasers established to combine purchasing power in order to obtain the best
- 131 value for the purchasers by engaging in procurements in accordance with Section [63G-6a-2105](#).
- 132 (20) "Cost-plus-a-percentage-of-cost contract" means a contract under which the
- 133 contractor is paid a percentage of the total actual expenses or costs in addition to the
- 134 contractor's actual expenses or costs.
- 135 (21) "Cost-reimbursement contract" means a contract under which a contractor is
- 136 reimbursed for costs which are allowed and allocated in accordance with the contract terms and
- 137 the provisions of this chapter, and a fee, if any.
- 138 (22) "Days" means calendar days, unless expressly provided otherwise.
- 139 (23) "Definite quantity contract" means a fixed price contract that provides for a
- 140 specified amount of supplies over a specified period, with deliveries scheduled according to a
- 141 specified schedule.
- 142 (24) "Design professional" means:
 - 143 (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects
 - 144 Licensing Act;
 - 145 (b) an individual licensed as a professional engineer or professional land surveyor
 - 146 under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing
 - 147 Act; or
 - 148 (c) an individual certified as a commercial interior designer under Title 58, Chapter 86,
 - 149 State Certification of Commercial Interior Designers Act.
- 150 (25) "Design professional procurement process" means the procurement process
- 151 described in Part 15, Design Professional Services.

- 152 (26) "Design professional services" means:
- 153 (a) professional services within the scope of the practice of architecture as defined in
- 154 Section [58-3a-102](#);
- 155 (b) professional engineering as defined in Section [58-22-102](#);
- 156 (c) master planning and programming services; or
- 157 (d) services within the scope of the practice of commercial interior design, as defined
- 158 in Section [58-86-102](#).
- 159 (27) "Design-build" means the procurement of design professional services and
- 160 construction by the use of a single contract.
- 161 (28) "Division" means the Division of Purchasing and General Services, created in
- 162 Section [63A-2-101](#).
- 163 (29) "Educational procurement unit" means:
- 164 (a) a school district;
- 165 (b) a public school, including a local school board or a charter school;
- 166 (c) the Utah Schools for the Deaf and the Blind;
- 167 (d) the Utah Education and Telehealth Network;
- 168 (e) an institution of higher education of the state described in Section [53B-1-102](#); or
- 169 (f) the State Board of Education.
- 170 (30) "Established catalogue price" means the price included in a catalogue, price list,
- 171 schedule, or other form that:
- 172 (a) is regularly maintained by a manufacturer or contractor;
- 173 (b) is published or otherwise available for inspection by customers; and
- 174 (c) states prices at which sales are currently or were last made to a significant number
- 175 of any category of buyers or buyers constituting the general buying public for the supplies or
- 176 services involved.
- 177 (31) (a) "Executive branch procurement unit" means a department, division, office,
- 178 bureau, agency, or other organization within the state executive branch.
- 179 (b) "Executive branch procurement unit" does not include the Colorado River
- 180 Authority of Utah as provided in Section [63M-14-210](#).
- 181 (32) "Facilities division" means the Division of Facilities Construction and
- 182 Management, created in Section [63A-5b-301](#).

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

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

188 (b) an adjustment is required by law.

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

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

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

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

197 (36) "Human services procurement item" means a procurement item used to provide
198 services or support to:

199 (a) a child, family, or adult at home, school, work, or in the community;

200 (b) an individual in secure care, as defined in Section [80-1-102](#); or

201 (c) an individual at the Utah State Hospital or the Utah State Developmental Center.

202 [~~36~~] (37) "Immaterial error":

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

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

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

207 (b) includes:

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

210 (ii) a typographical error;

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

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

213 [~~37~~] (38) "Indefinite quantity contract" means a fixed price contract that:

- 214 (a) is for an indefinite amount of procurement items to be supplied as ordered by a
- 215 procurement unit; and
- 216 (b) (i) does not require a minimum purchase amount; or
- 217 (ii) provides a maximum purchase limit.
- 218 ~~[(38)]~~ (39) "Independent procurement unit" means:
- 219 (a) (i) a legislative procurement unit;
- 220 (ii) a judicial branch procurement unit;
- 221 (iii) an educational procurement unit;
- 222 (iv) a local government procurement unit;
- 223 (v) a conservation district;
- 224 (vi) a local building authority;
- 225 (vii) a local district;
- 226 (viii) a public corporation;
- 227 (ix) a special service district; or
- 228 (x) the Utah Communications Authority, established in Section [63H-7a-201](#);
- 229 (b) the facilities division, but only to the extent of the procurement authority provided
- 230 under Title 63A, Chapter 5b, Administration of State Facilities;
- 231 (c) the attorney general, but only to the extent of the procurement authority provided
- 232 under Title 67, Chapter 5, Attorney General;
- 233 (d) the Department of Transportation, but only to the extent of the procurement
- 234 authority provided under Title 72, Transportation Code; ~~[or]~~
- 235 (e) the Department of Health and Human Services, but only for a human services
- 236 procurement item; or
- 237 ~~[(e)]~~ (f) any other executive branch department, division, office, or entity that has
- 238 statutory procurement authority outside this chapter, but only to the extent of that statutory
- 239 procurement authority.
- 240 ~~[(39)]~~ (40) "Invitation for bids":
- 241 (a) means a document used to solicit:
- 242 (i) bids to provide a procurement item to a procurement unit; or
- 243 (ii) quotes for a price of a procurement item to be provided to a procurement unit; and
- 244 (b) includes all documents attached to or incorporated by reference in a document

245 described in Subsection [~~(39)~~(a):] (40)(a).

246 [~~(40)~~] (41) "Issuing procurement unit" means a procurement unit that:

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

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

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

250 [~~(41)~~] (42) "Judicial procurement unit" means:

251 (a) the Utah Supreme Court;

252 (b) the Utah Court of Appeals;

253 (c) the Judicial Council;

254 (d) a state judicial district; or

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

257 [~~(42)~~] (43) "Labor hour contract" is a contract under which:

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

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

261 [~~(43)~~] (44) "Legislative procurement unit" means:

262 (a) the Legislature;

263 (b) the Senate;

264 (c) the House of Representatives;

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

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

267 (i) within the state legislative branch; or

268 (ii) (A) that is created by statute to advise or make recommendations to the Legislature;

269 (B) the membership of which includes legislators; and

270 (C) for which the Office of Legislative Research and General Counsel provides staff
271 support.

272 [~~(44)~~] (45) "Local building authority" means the same as that term is defined in Section
273 [17D-2-102](#).

274 [~~(45)~~] (46) "Local district" means the same as that term is defined in Section
275 [17B-1-102](#).

276 [~~(46)~~] (47) "Local government procurement unit" means:

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

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

280 (ii) the project entity adopts a procurement code through the process described in
281 Section 11-13-316;

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

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

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

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

289 (ii) a term in the ordinance is used in the language a project entity adopts in its
290 procurement code through the process described in Section 11-13-316.

291 [~~(47)~~] (48) "Multiple award contracts" means the award of a contract for an indefinite
292 quantity of a procurement item to more than one person.

293 [~~(48)~~] (49) "Multiyear contract" means a contract that extends beyond a one-year
294 period, including a contract that permits renewal of the contract, without competition, beyond
295 the first year of the contract.

296 [~~(49)~~] (50) "Municipality" means a city, town, or metro township.

297 [~~(50)~~] (51) "Nonadopting local government procurement unit" means:

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

301 (b) each office or agency of a county or municipality described in Subsection [~~(50)(a)-~~]
302 (51)(a).

303 [~~(51)~~] (52) "Offeror" means a person who submits a proposal in response to a request
304 for proposals.

305 [~~(52)~~] (53) "Preferred bidder" means a bidder that is entitled to receive a reciprocal
306 preference under the requirements of this chapter.

307 [~~(53)~~] (54) "Procure" means to acquire a procurement item through a procurement.

308 [~~(54)~~] (55) "Procurement" means the acquisition of a procurement item through an
309 expenditure of public funds, or an agreement to expend public funds, including an acquisition
310 through a public-private partnership.

311 [~~(55)~~] (56) "Procurement item" means an item of personal property, a technology, a
312 service, or a construction project.

313 [~~(56)~~] (57) "Procurement official" means:

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

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

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

320 (d) for a local government procurement unit:

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

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

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

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

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

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

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

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

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

337 (l) for an institution of higher education described in Section [53B-2-101](#), the president

338 of the institution of higher education or the president's designee;

339 (m) for the State Board of Education, the State Board of Education or the State Board
340 of Education's designee;

341 (n) for the Utah Board of Higher Education, the Commissioner of Higher Education or
342 the designee of the Commissioner of Higher Education;

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

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

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

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

359 (iv) for the Department of Health and Human Services, and only to the extent of the
360 procurement activities of the Department of Health and Human Services as an independent
361 procurement unit, the executive director of the Department of Health and Human Services or
362 the executive director's designee; or

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

369 [~~(57)~~] (58) "Procurement unit":

370 (a) means:

371 (i) a legislative procurement unit;

372 (ii) an executive branch procurement unit;

373 (iii) a judicial procurement unit;

374 (iv) an educational procurement unit;

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

376 (vi) a local government procurement unit;

377 (vii) a local district;

378 (viii) a special service district;

379 (ix) a local building authority;

380 (x) a conservation district; and

381 (xi) a public corporation; and

382 (b) except for a project entity, to the extent that a project entity is subject to this chapter

383 as described in Section 11-13-316, does not include a political subdivision created under Title

384 11, Chapter 13, Interlocal Cooperation Act.

385 [~~(58)~~] (59) "Professional service" means labor, effort, or work that requires specialized
386 knowledge, expertise, and discretion, including labor, effort, or work in the field of:

387 (a) accounting;

388 (b) administrative law judge service;

389 (c) architecture;

390 (d) construction design and management;

391 (e) engineering;

392 (f) financial services;

393 (g) information technology;

394 (h) the law;

395 (i) medicine;

396 (j) psychiatry; or

397 (k) underwriting.

398 [~~(59)~~] (60) "Protest officer" means:

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

- 400 (i) the procurement official;
- 401 (ii) the procurement official's designee who is an employee of the procurement unit; or
- 402 (iii) a person designated by rule made by the rulemaking authority; or
- 403 (b) for a procurement unit other than an independent procurement unit, the chief
- 404 procurement officer or the chief procurement officer's designee who is an employee of the
- 405 division .

406 [~~(60)~~] (61) "Public corporation" means the same as that term is defined in Section

407 [63E-1-102](#).

408 [~~(61)~~] (62) "Project entity" means the same as that term is defined in Section

409 [11-13-103](#).

410 [~~(62)~~] (63) "Public entity" means the state or any other government entity within the

411 state that expends public funds.

412 [~~(63)~~] (64) "Public facility" means a building, structure, infrastructure, improvement,

413 or other facility of a public entity.

414 [~~(64)~~] (65) "Public funds" means money, regardless of its source, including from the

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

416 [~~(65)~~] (66) "Public transit district" means a public transit district organized under Title

417 17B, Chapter 2a, Part 8, Public Transit District Act.

418 [~~(66)~~] (67) "Public-private partnership" means an arrangement or agreement, occurring

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

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

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

422 maintaining, financing, or operating the project.

423 [~~(67)~~] (68) "Qualified vendor" means a vendor who:

- 424 (a) is responsible; and
- 425 (b) submits a responsive statement of qualifications under Section [63G-6a-410](#) that
- 426 meets the minimum mandatory requirements, evaluation criteria, and any applicable score
- 427 thresholds set forth in the request for statement of qualifications.

428 [~~(68)~~] (69) "Real property" means land and any building, fixture, improvement,

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

430 [~~(69)~~] (70) "Request for information" means a nonbinding process through which a

431 procurement unit requests information relating to a procurement item.

432 ~~[(70)]~~ (71) "Request for proposals" means a document used to solicit proposals to
433 provide a procurement item to a procurement unit, including all other documents that are
434 attached to that document or incorporated in that document by reference.

435 ~~[(71)]~~ (72) "Request for proposals process" means the procurement process described
436 in Part 7, Request for Proposals.

437 ~~[(72)]~~ (73) "Request for statement of qualifications" means a document used to solicit
438 information about the qualifications of a person interested in responding to a potential
439 procurement, including all other documents attached to that document or incorporated in that
440 document by reference.

441 ~~[(73)]~~ (74) "Requirements contract" means a contract:

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

444 (b) that:

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

446 (ii) provides a maximum purchase limit.

447 ~~[(74)]~~ (75) "Responsible" means being capable, in all respects, of:

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

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

451 ~~[(75)]~~ (76) "Responsive" means conforming in all material respects to the requirements
452 of a solicitation.

453 ~~[(76)]~~ (77) "Rule" includes a policy or regulation adopted by the rulemaking authority,
454 if adopting a policy or regulation is the method the rulemaking authority uses to adopt
455 provisions that govern the applicable procurement unit.

456 ~~[(77)]~~ (78) "Rulemaking authority" means:

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

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

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

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

462 (B) for the Office of the Attorney General, the attorney general;
463 (C) for the Department of Transportation created in Section 72-1-201, the executive
464 director of the Department of Transportation; [~~and~~]
465 (D) for the Department of Health and Human Services, the executive director of the
466 Department of Health and Human Services; and
467 [~~(D)~~] (E) for any other executive branch department, division, office, or entity that has
468 statutory procurement authority outside this chapter, the governing authority of the department,
469 division, office, or entity; and
470 (ii) for each other executive branch procurement unit, the board;
471 (d) for a local government procurement unit:
472 (i) the governing body of the local government unit; or
473 (ii) an individual or body designated by the local government procurement unit;
474 (e) for a school district or a public school, the board, except to the extent of a school
475 district's own nonadministrative rules that do not conflict with the provisions of this chapter;
476 (f) for a state institution of higher education, the Utah Board of Higher Education;
477 (g) for the State Board of Education or the Utah Schools for the Deaf and the Blind, the
478 State Board of Education;
479 (h) for a public transit district, the chief executive of the public transit district;
480 (i) for a local district other than a public transit district or for a special service district,
481 the board, except to the extent that the board of trustees of the local district or the governing
482 body of the special service district makes its own rules:
483 (i) with respect to a subject addressed by board rules; or
484 (ii) that are in addition to board rules;
485 (j) for the Utah Educational Savings Plan, created in Section 53B-8a-103, the Utah
486 Board of Higher Education;
487 (k) for the School and Institutional Trust Lands Administration, created in Section
488 53C-1-201, the School and Institutional Trust Lands Board of Trustees;
489 (l) for the School and Institutional Trust Fund Office, created in Section 53D-1-201,
490 the School and Institutional Trust Fund Board of Trustees;
491 (m) for the Utah Communications Authority, established in Section 63H-7a-201, the
492 Utah Communications Authority board, created in Section 63H-7a-203; or

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

494 [~~(78)~~] (79) "Service":

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

497 (b) includes a professional service; and

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

500 [~~(79)~~] (80) "Small purchase process" means the procurement process described in
501 Section [63G-6a-506](#).

502 [~~(80)~~] (81) "Sole source contract" means a contract resulting from a sole source
503 procurement.

504 [~~(81)~~] (82) "Sole source procurement" means a procurement without competition
505 pursuant to a determination under Subsection [63G-6a-802\(1\)\(a\)](#) that there is only one source
506 for the procurement item.

507 [~~(82)~~] (83) "Solicitation" means an invitation for bids, request for proposals, or request
508 for statement of qualifications.

509 [~~(83)~~] (84) "Solicitation response" means:

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

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

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

514 [~~(84)~~] (85) "Special service district" means the same as that term is defined in Section
515 [17D-1-102](#).

516 [~~(85)~~] (86) "Specification" means any description of the physical or functional
517 characteristics or of the nature of a procurement item included in an invitation for bids or a
518 request for proposals, or otherwise specified or agreed to by a procurement unit, including a
519 description of:

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

521 (b) preparing a procurement item for delivery.

522 [~~(86)~~] (87) "Standard procurement process" means:

523 (a) the bidding process;

524 (b) the request for proposals process;

525 (c) the approved vendor list process;

526 (d) the small purchase process; or

527 (e) the design professional procurement process.

528 [~~87~~] (88) "State cooperative contract" means a contract awarded by the division for
529 and in behalf of all public entities.

530 [~~88~~] (89) "Statement of qualifications" means a written statement submitted to a
531 procurement unit in response to a request for statement of qualifications.

532 [~~89~~] (90) "Subcontractor":

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

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

539 [~~90~~] (91) "Technology" means the same as "information technology," as defined in
540 Section 63A-16-102.

541 [~~91~~] (92) "Tie bid" means that the lowest responsive bids of responsible bidders are
542 identical in price.

543 [~~92~~] (93) "Time and materials contract" means a contract under which the contractor
544 is paid:

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

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

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

549 [~~93~~] (94) "Transitional costs":

550 (a) means the costs of changing:

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

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

554 (b) includes:

- 555 (i) training costs;
- 556 (ii) conversion costs;
- 557 (iii) compatibility costs;
- 558 (iv) costs associated with system downtime;
- 559 (v) disruption of service costs;
- 560 (vi) staff time necessary to implement the change;
- 561 (vii) installation costs; and
- 562 (viii) ancillary software, hardware, equipment, or construction costs; and

563 (c) does not include:

- 564 (i) the costs of preparing for or engaging in a procurement process; or
- 565 (ii) contract negotiation or drafting costs.

566 [~~94~~] (95) "Vendor":

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

569 (b) includes:

- 570 (i) a bidder;
- 571 (ii) an offeror;
- 572 (iii) an approved vendor;
- 573 (iv) a design professional; and
- 574 (v) a person who submits an unsolicited proposal under Section [63G-6a-712](#).

575 Section 2. Section **63G-6a-107.6** is amended to read:

576 **63G-6a-107.6. Exemptions from chapter.**

577 (1) Except for this Subsection (1), the provisions of this chapter do not apply to:

- 578 (a) a public entity's acquisition of a procurement item from another public entity; or
- 579 (b) a public entity that is not a procurement unit, including the Colorado River
580 Authority of Utah as provided in Section [63M-14-210](#).

581 (2) Unless otherwise provided by statute and except for this Subsection (2), the
582 provisions of this chapter do not apply to the acquisition or disposal of real property or an
583 interest in real property.

584 (3) Except for this Subsection (3) and Part 24, Unlawful Conduct and Penalties, the
585 provisions of this chapter do not apply to:

586 (a) funds administered under the Percent-for-Art Program of the Utah Percent-for-Art
587 Act;

588 (b) a grant;

589 (c) medical supplies or medical equipment, including service agreements for medical
590 equipment, obtained by the University of Utah Hospital or the Department of Health and
591 Human Services through a purchasing consortium if:

592 (i) the consortium uses a competitive procurement process; and

593 (ii) the chief administrative officer of the hospital or the Department of Health and
594 Human Services makes a written finding that the prices for purchasing medical supplies and
595 medical equipment through the consortium are competitive with market prices;

596 (d) the purchase of firefighting supplies or equipment by the Division of Forestry, Fire,
597 and State Lands, created in Section 65A-1-4, through the federal General Services
598 Administration or the National Fire Cache system;

599 (e) supplies purchased for resale to the public; or

600 (f) activities related to the management of investments by a public entity granted
601 investment authority by law.

602 (4) This chapter does not supersede the requirements for retention or withholding of
603 construction proceeds and release of construction proceeds as provided in Section 13-8-5.

604 (5) Except for this Subsection (5), the provisions of this chapter do not apply to a
605 procurement unit's hiring a mediator, arbitrator, or arbitration panel member to participate in
606 the procurement unit's dispute resolution efforts.

607 Section 3. Section 63G-6a-107.7 is amended to read:

608 **63G-6a-107.7. Procurement rules.**

609 (1) (a) Subject to Subsection (1)(b), the rulemaking authority for a procurement unit
610 shall make rules relating to the management and control of procurements and procurement
611 procedures by the procurement unit.

612 (b) Building board rules governing procurement of construction projects, design
613 professional services, and leases apply to the procurement of construction projects, design
614 professional services, and leases of real property, respectively, by the Division of Facilities
615 Construction and Management.

616 (2) A rulemaking authority may not adopt rules, policies, or regulations that are

617 inconsistent with this chapter.

618 (3) An individual or body that makes rules as required or authorized in this chapter
619 shall make the rules:

620 (a) in accordance with Chapter 3, Utah Administrative Rulemaking Act, if the
621 individual or body is subject to Chapter 3, Utah Administrative Rulemaking Act; or

622 (b) in accordance with the established process for making rules or their equivalent, if
623 the individual or body is not subject to Chapter 3, Utah Administrative Rulemaking Act.

624 (4) The rules of the rulemaking authority for the executive branch procurement unit
625 shall require, for each contract and request for proposals, the inclusion of a clause that requires
626 the issuing procurement unit, for the duration of the contract, to make available contact
627 information of the winning contractor to the Department of Workforce Services in accordance
628 with Section [35A-2-203](#). This requirement does not preclude a contractor from advertising job
629 openings in other forums throughout the state.

630 (5) The Department of Transportation may make rules governing the procurement of a
631 highway construction project or highway improvement project.

632 (6) The rulemaking authority for a public transit district may make rules governing the
633 procurement of a transit construction project or a transit improvement project.

634 (7) The Department of Health and Human Services may make rules governing the
635 procurement of a human services procurement item.

636 Section 4. Section [63G-6a-1702](#) is amended to read:

637 **[63G-6a-1702. Appeal to Utah State Procurement Policy Board -- Appointment of](#)**
638 **[procurement appeals panel -- Proceedings.](#)**

639 (1) [~~This~~] Except as provided in Section [63G-6a-1702](#), this part applies to all
640 procurement units other than:

641 (a) a legislative procurement unit;

642 (b) a judicial procurement unit;

643 (c) a nonadopting local government procurement unit; or

644 (d) a public transit district.

645 (2) (a) Subject to Section [63G-6a-1703](#), a protestor may appeal to the board a protest
646 decision of a procurement unit that is subject to this part by filing a written notice of appeal
647 with the chair of the board within seven days after:

648 (i) the day on which the written decision described in Section 63G-6a-1603 is:
649 (A) personally served on the party or the party's representative; or
650 (B) emailed or mailed to the address or email address provided by the party under
651 Subsection 63G-6a-1602(4); or
652 (ii) the day on which the 30-day period described in Subsection 63G-6a-1603(9) ends,
653 if a written decision is not issued before the end of the 30-day period.
654 (b) A notice of appeal under Subsection (2)(a) shall:
655 (i) include the address of record and email address of record of the party filing the
656 notice of appeal; and
657 (ii) be accompanied by a copy of any written protest decision.
658 (c) The deadline for appealing a protest decision may not be modified.
659 (3) A person may not base an appeal of a protest under this section on:
660 (a) a ground not specified in the person's protest under Section 63G-6a-1602; or
661 (b) new or additional evidence not considered by the protest officer.
662 (4) (a) A person may not appeal from a protest described in Section 63G-6a-1602,
663 unless:
664 (i) a decision on the protest has been issued; or
665 (ii) a decision is not issued and the 30-day period described in Subsection
666 63G-6a-1603(9), or a longer period agreed to by the parties, has passed.
667 (b) A procurement unit may not appeal a protest decision or other determination made
668 by the procurement unit's protest officer.
669 (5) (a) Within seven days after the chair of the board receives a written notice of an
670 appeal under this section, the chair shall submit a written request to the protest officer for the
671 protest appeal record.
672 (b) Within seven days after the chair receives the protest appeal record from the protest
673 officer, the appointing officer shall, in consultation with the attorney general's office:
674 (i) review the appeal to determine whether the appeal complies with the requirements
675 of Subsections (2), (3), and (4) and Section 63G-6a-1703; and
676 (ii) (A) dismiss any claim asserted in the appeal, or dismiss the appeal, without holding
677 a hearing if the appointing officer determines that the claim or appeal, respectively, fails to
678 comply with any of the requirements listed in Subsection (5)(b)(i); or

679 (B) appoint a procurement appeals panel to conduct an administrative review of any
680 claim in the appeal that has not been dismissed under Subsection (5)(b)(ii)(A), if the appointing
681 officer determines that one or more claims asserted in the appeal comply with the requirements
682 listed in Subsection (5)(b)(i).

683 (c) A procurement appeals panel appointed under Subsection (5)(a) shall consist of an
684 odd number of at least three individuals, each of whom is:

685 (i) a member of the board; or

686 (ii) a designee of a member appointed under Subsection (5)(c)(i), if the designee is
687 approved by the chair of the board.

688 (d) The appointing officer shall appoint one of the members of the procurement
689 appeals panel to serve as the coordinator of the panel.

690 (e) The appointing officer may:

691 (i) appoint the same procurement appeals panel to hear more than one appeal; or

692 (ii) appoint a separate procurement appeals panel for each appeal.

693 (f) The appointing officer may not appoint a person to a procurement appeals panel if
694 the person is employed by the procurement unit responsible for the solicitation, contract award,
695 or other action that is the subject of the protestor's protest.

696 (g) The appointing officer shall, at the time the procurement appeals panel is
697 appointed, provide appeals panel members with a copy of the notice of appeal filed under
698 Subsection (2) and the protest decision record.

699 (6) (a) A procurement appeals panel described in Subsection (5):

700 (i) shall conduct an administrative review of the appeal within 30 days after the day on
701 which the procurement appeals panel is appointed, or before a later date that all parties agree
702 upon, unless the appeal is dismissed under Subsection (8)(a); and

703 (ii) (A) may, as part of the administrative review and at the sole discretion of the
704 procurement appeals panel, conduct an informal hearing, if the procurement appeals panel
705 considers a hearing to be necessary; and

706 (B) if the procurement appeals panel conducts an informal hearing, shall, at least seven
707 days before the hearing, mail, email, or hand-deliver a written notice of the hearing to the
708 parties to the appeal.

709 (b) A procurement appeals panel may, during an informal hearing, ask questions and

710 receive responses regarding the appeal and the protest appeal record to assist the procurement
711 appeals panel to understand the basis of the appeal and information contained in the protest
712 appeal record, but may not otherwise take any additional evidence or consider any additional
713 ground for the appeal.

714 (7) A procurement appeals panel shall consider and decide the appeal based solely on:

715 (a) the notice of appeal and the protest appeal record; and

716 (b) responses received during an informal hearing, if an informal hearing is held and to
717 the extent allowed under Subsection (6)(b).

718 (8) A procurement appeals panel:

719 (a) may dismiss an appeal if the appeal does not comply with the requirements of this
720 chapter; and

721 (b) shall uphold the protest decision unless the protest decision is arbitrary and
722 capricious or clearly erroneous.

723 (9) The procurement appeals panel shall, within seven days after the day on which the
724 procurement appeals panel concludes the administrative review:

725 (a) issue a written decision on the appeal; and

726 (b) mail, email, or hand-deliver the written decision on the appeal to the parties to the
727 appeal and to the protest officer.

728 (10) (a) The deliberations of a procurement appeals panel may be held in private.

729 (b) If the procurement appeals panel is a public body, as defined in Section [52-4-103](#),
730 the procurement appeals panel shall comply with Section [52-4-205](#) in closing a meeting for its
731 deliberations.

732 (11) A procurement appeals panel may continue an administrative review under this
733 section beyond the 30-day period described in Subsection (6)(a)(i) if the procurement appeals
734 panel determines that the continuance is in the interests of justice.

735 (12) If a procurement appeals panel determines that the decision of the protest officer is
736 arbitrary and capricious or clearly erroneous, the procurement appeals panel:

737 (a) shall remand the matter to the protest officer, to cure the problem or render a new
738 decision;

739 (b) may recommend action that the protest officer should take; and

740 (c) may not order that:

- 741 (i) a contract be awarded to a certain person;
- 742 (ii) a contract or solicitation be cancelled; or
- 743 (iii) any other action be taken other than the action described in Subsection (12)(a).

744 (13) The board shall make rules relating to the conduct of an appeals proceeding,
 745 including rules that provide for:

- 746 (a) expedited proceedings; and
- 747 (b) electronic participation in the proceedings by panel members and participants.

748 (14) The Rules of Evidence do not apply to a hearing held by a procurement appeals
 749 panel.

750 (15) Part 20, Records, applies to the records involved in the process described in this
 751 section, including the decision issued by a procurement appeals panel.

752 Section 5. Section **63G-6a-2501** is enacted to read:

753 **Part 25. Human Services Procurements**

754 **63G-6a-2501. Definitions.**

755 As used in this part:

756 (1) "Department" means the Department of Health and Human Services.

757 (2) "Executive director" means the executive director of the department.

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

759 **63G-6a-2502. Procurement advisory council -- Appointment.**

760 The executive director may appoint an advisory council to advise and make
 761 recommendations to the department on the procurement of a human services procurement item,
 762 including recommendations regarding persons to be debarred or suspended under Section
 763 [63G-6a-2504.](#)

764 Section 7. Section **63G-6a-2503** is enacted to read:

765 **63G-6a-2503. Direct purchase procurement process requirements -- Payment**
 766 **information on website.**

767 (1) The department may, without issuing a solicitation, directly purchase from, or
 768 contract with, another person for the following human services procurement items:

769 (a) medical, dental, behavioral, psychological, psychiatric, or substance use evaluation
 770 and treatment for an individual;

771 (b) assistance payments on behalf of an individual that are intended to keep the

772 individual out of a higher level of care or prevent or reduce the need for additional department
773 services;

774 (c) services for which the individual receiving the services has the right to choose the
775 person who provides the services;

776 (d) services for which the department makes a written determination, made available to
777 the public, that the individual's need to receive services from a particular provider outweigh the
778 public interest in issuing a competitive procurement;

779 (e) adoption subsidy and maintenance payments;

780 (f) child placing services for an individual adoption;

781 (g) death investigation services; or

782 (h) residential treatment services for an individual after all providers under contract
783 from a competitive procurement are exhausted.

784 (2) The department shall:

785 (a) maintain a written record of the name of all persons who provide services under this
786 section; and

787 (b) annually publish on the department's website the total amount paid to each person
788 under this section during the immediately preceding five-year period.

789 Section 8. Section **63G-6a-2504** is enacted to read:

790 **63G-6a-2504. Open enrollment procurement process requirements.**

791 (1) The department may contract with another person for a human services
792 procurement item in accordance with the open enrollment invitation process described in this
793 section.

794 (2) (a) The department may issue an open enrollment invitation for applications to
795 provide the department a human services procurement item that includes:

796 (i) a description of the human services procurement item the department is seeking to
797 obtain;

798 (ii) the time period for which the invitation will remain open for applications;

799 (iii) the requirements for submission of an application;

800 (iv) the payment rate or a description of the process for determining the payment rate
801 for the human services procurement item;

802 (v) the requirements a provider is required to meet to be awarded a contract for the

803 human service procurement item; and
804 (vi) the required terms and conditions of a contract if awarded.
805 (b) The department shall publish the invitation in accordance with the notice
806 requirements for a solicitation described in Section 63G-6a-2506.
807 (c) The department may:
808 (i) keep an invitation open for an indeterminate or specified time period;
809 (ii) close an invitation if the need for additional providers for a human services
810 procurement item no longer exists; or
811 (iii) reissue an invitation after closing the invitation.
812 (d) The department may provide technical application assistance to a person applying
813 to an invitation.
814 (3) (a) Upon receipt of an application to an invitation, the department shall:
815 (i) review the application to determine compliance with the requirements described in
816 Subsection (2)(a);
817 (ii) award a contract to a person whose application complies with Subsection (2)(a);
818 and
819 (iii) reject an application that does not comply with Subsection (2)(a).
820 (b) If the department closes an invitation, the department may reject an application
821 submitted before the invitation is closed.
822 (c) The department may allow a person to correct deficiencies in an application during
823 the department's review of the application under Subsection (3)(a).
824 (4) If a person's application is rejected under Subsection (3):
825 (a) the department shall notify the person of the rejection in writing; and
826 (b) the person may not reapply to the same invitation for at least 12 months after the
827 day on which the rejection is issued.
828 (5) The department shall make rules to establish procedures to ensure the open
829 enrollment invitation process described in this section is administered in an open and fair
830 manner that provides any interested, qualified provider the ability to obtain a contract.
831 Section 9. Section **63G-6a-2505** is enacted to read:
832 **63G-6a-2505. Debarred or suspension from consideration for award of contract.**
833 (1) The executive director may:

834 (a) debar or suspend a person from consideration for award of contracts for a human
835 services procurement item for any amount of time in accordance with the process described in
836 Subsection 63G-6a-904(1); and

837 (b) obtain the recommendation of the council before debarring or suspending the
838 person.

839 (2) The council shall recommend that the executive director debar or suspend a person
840 for award of contracts for a human services procurement item if the person:

841 (a) is convicted of a criminal offense:

842 (i) for actions taken to obtain or perform under a public or private contract;

843 (ii) for embezzlement, fraud, theft, forgery, bribery, falsification or destruction of
844 records, or receiving stolen property; or

845 (iii) under Title 76, Chapter 10, Part 31, Utah Antitrust Act, or another antitrust law;

846 (b) fails, without good cause, to perform in accordance with the terms of a contract
847 with the department;

848 (c) commits two or more violations of department rules made in accordance with Title
849 63G, Chapter 3, Utah Administrative Rulemaking Act;

850 (d) violates this chapter;

851 (e) poses a significant risk of harm to department clients or the department;

852 (f) is barred or suspended from providing services to another governmental agency; or

853 (g) takes another action that the council determines is fraudulent or substantially affects

854 the person's ability to perform under a contract with the department for a human services
855 procurement item.

856 Section 10. Section **63G-6a-2506** is enacted to read:

857 **63G-6a-2506. Public notice requirements.**

858 (1) The department may post notice of a solicitation in accordance with Subsection

859 63G-6a-112(1) at least three days before the day of the deadline for submission of a solicitation
860 response.

861 (2) The department may reduce the three-day period described in Subsection (1) in

862 accordance with Subsection 63G-6a-112(2).

863 Section 11. Section **63G-6a-2507** is enacted to read:

864 **63G-6a-2507. Human services procurement appeals process.**

865 (1) A protester may appeal a protest decision to the department in the same manner a
866 protest may be appealed to the board under Part 17, Procurement Appeals Board.

867 (2) In conducting an appeal under Subsection (1), the executive director has the same
868 powers and authority as the chair of the board and the appointing officer in an appeal
869 conducted under Part 17, Procurement Appeals Board, including the power to appoint a
870 procurement appeals panel to conduct a review of a claim in the appeal.