

Representative Anthony E. Loubet proposes the following substitute bill:

PROCUREMENT CODE AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Anthony E. Loubet

Senate Sponsor: Chris H. Wilson

LONG TITLE

General Description:

This bill modifies provisions of the Utah Procurement Code.

Highlighted Provisions:

This bill:

- ▶ modifies definitions applicable to the Utah Procurement Code;
- ▶ exempts an interlocal entity from the procurement code if the interlocal entity adopts a set of procurement rules or policies that meet certain requirements;
- ▶ provides definitions relating to procurements by the Department of Health and Human Services;
- ▶ provides that the department is an independent procurement unit for certain human services procurements;
- ▶ exempts the department from the Utah Procurement Code for certain medical supply purchases;
- ▶ establishes requirements for a human services procurement by the department;
- ▶ authorizes the executive director of the department to appoint a procurement advisory council;
- ▶ provides a process for the department to issue invitations for a human services procurement item;



- 26 ▶ grants the department administrative rulemaking authority with respect to certain
- 27 department procurements; and
- 28 ▶ makes technical changes.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

- 35 11-13-226, as enacted by Laws of Utah 2015, Chapter 265
- 36 63G-6a-103, as last amended by Laws of Utah 2023, Chapter 16
- 37 63G-6a-107.6, as last amended by Laws of Utah 2021, Chapter 179
- 38 63G-6a-107.7, as last amended by Laws of Utah 2023, Chapter 369
- 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 11-13-226 is amended to read:

51 **11-13-226. Competitive procurement -- Subject to state procurement code --**
52 **Exception.**

53 (1) The governing board of each interlocal entity shall adopt rules or policies for the
54 competitive public procurement of goods and services required for the operation of the
55 interlocal entity.

56 (2) Subject to Section 11-13-316, an interlocal entity is subject to and shall comply

57 with Title 63G, Chapter 6a, Utah Procurement Code, unless the board rules or policies adopted
58 under Subsection (1) include provisions to:

59 (a) establish a procurement officer of the interlocal entity and define the duties of the
60 procurement officer;

61 (b) define the values of procurement thresholds used to determine the method of
62 procurement the interlocal entity will use based on those thresholds;

63 (c) address small purchases and establish small purchase thresholds and methods
64 applicable to small purchases;

65 (d) establish a procurement method that uses only objective criteria to award a contract
66 to the lowest responsible bidder that submits a responsive bid;

67 (e) establish a procurement method that allows subjective criteria to award a contract to
68 the vendor that submits the highest scoring proposal, including:

69 (i) a selection or evaluation committee of at least three individuals; and

70 (ii) documented independent scoring by the selection or evaluation committee to
71 determine best value;

72 (f) establish a method to allow for the cancellation of a solicitation;

73 (g) establish a method for creating a list of approved, qualified vendors;

74 (h) establish a method to request information before initiating a procurement process;

75 (i) allow the purchase of a procurement item under a state cooperative contract, as
76 defined in Section [63G-6a-103](#), or another government approved contract that results from a
77 competitive process;

78 (j) establish a procurement appeals process;

79 (k) establish documentation requirements applicable to procurements;

80 (l) establish notice requirements relating to the interlocal entity's issuance of a
81 solicitation;

82 (m) require that a procurement be awarded based on the criteria included in a
83 solicitation;

84 (n) allow for a procurement from a single source under documented and properly
85 noticed conditions;

86 (o) allow for an emergency procurement under documented conditions;

87 (p) prohibit a cost-plus-percentage-of-cost contract and a cost-reimbursement contract,

88 with exceptions similar to exceptions under Subsections [63G-6a-1205\(5\)](#) and (6);

89 (q) limit the length of a contract, allowing for documented exceptions;

90 (r) require that the total value of the contract over the entire contract period determines
91 the procurement threshold;

92 (s) prohibit dividing a procurement into multiple procurements to avoid an applicable
93 procurement threshold;

94 (t) prohibit the acceptance of bribes, gifts, or other favors from a vendor in exchange
95 for favorable treatment on a procurement;

96 (u) describe bond requirements for a construction contract; and

97 (v) establish standard terms and conditions for a contract with the interlocal entity.

98 Section 2. Section **63G-6a-103** is amended to read:

99 **63G-6a-103. Definitions.**

100 As used in this chapter:

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

103 (2) "Approved vendor list" means a list of approved vendors established under Section
104 [63G-6a-507](#).

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

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

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

110 (6) "Board" means the Utah State Procurement Policy Board, created in Section
111 [63G-6a-202](#).

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

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

118 (9) "Chief procurement officer" means the individual appointed under Section

119 63A-2-102.

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

122 (a) except:

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

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

125 (b) including:

126 (i) preparing any solicitation document;

127 (ii) appointing an evaluation committee;

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

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

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

133 (vi) contract administration.

134 (11) "Conservation district" means the same as that term is defined in Section

135 17D-3-102.

136 (12) "Construction project":

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

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

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

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

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

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

148 (b) does not include a contractor whose only subcontract work not included in the
149 contractor's cost proposal submitted as part of the procurement of the contractor's services is to

150 meet subcontracted portions of change orders approved within the scope of the project.

151 (14) "Construction subcontractor":

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

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

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

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

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

162 (a) implementing the contract;

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

165 (c) executing change orders;

166 (d) processing contract amendments;

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

168 (f) curing contract errors and deficiencies;

169 (g) terminating a contract;

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

171 (i) computing payments under the contract; and

172 (j) closing out a contract.

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

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

175 (a) more than one procurement unit; or

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

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

180 (20) "Cost-plus-a-percentage-of-cost contract" means a contract under which the

181 contractor is paid a percentage of the total actual expenses or costs in addition to the
182 contractor's actual expenses or costs.

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

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

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

190 (24) "Design professional" means:

191 (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects
192 Licensing Act;

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

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

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

200 (26) "Design professional services" means:

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

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

204 (c) master planning and programming services; or

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

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

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

211 (29) "Educational procurement unit" means:

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

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

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

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

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

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

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

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

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

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

242 (35) "Grant" means an expenditure of public funds or other assistance, or an agreement

243 to expend public funds or other assistance, for a public purpose authorized by law, without
244 acquiring a procurement item in exchange.

245 (36) "Human services procurement item" means a procurement item used to provide
246 services or support to a child, youth, adult, or family.

247 [~~36~~] (37) "Immaterial error":

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

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

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

252 (b) includes:

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

255 (ii) a typographical error;

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

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

258 [~~37~~] (38) "Indefinite quantity contract" means a fixed price contract that:

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

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

262 (ii) provides a maximum purchase limit.

263 [~~38~~] (39) "Independent procurement unit" means:

264 (a) (i) a legislative procurement unit;

265 (ii) a judicial branch procurement unit;

266 (iii) an educational procurement unit;

267 (iv) a local government procurement unit;

268 (v) a conservation district;

269 (vi) a local building authority;

270 (vii) a special district;

271 (viii) a public corporation;

272 (ix) a special service district; or

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

274 (b) the facilities division, but only to the extent of the procurement authority provided
 275 under Title 63A, Chapter 5b, Administration of State Facilities;

276 (c) the attorney general, but only to the extent of the procurement authority provided
 277 under Title 67, Chapter 5, Attorney General;

278 (d) the Department of Transportation, but only to the extent of the procurement
 279 authority provided under Title 72, Transportation Code; [~~or~~]

280 (e) the Department of Health and Human Services, but only for the procurement of a
 281 human services procurement item; or

282 [~~(f)~~] (f) any other executive branch department, division, office, or entity that has
 283 statutory procurement authority outside this chapter, but only to the extent of that statutory
 284 procurement authority.

285 (40) (a) "Interlocal entity" means a separate political subdivision created under Title
 286 11, Chapter 13, Interlocal Cooperation Act.

287 (b) "Interlocal entity" does not include a project entity.

288 [~~(39)~~] (41) "Invitation for bids":

289 (a) means a document used to solicit:

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

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

292 (b) includes all documents attached to or incorporated by reference in a document
 293 described in Subsection [~~(39)(a)~~] ~~§~~→ [(41)(a)] (41)(a) ←~~§~~ .

294 [~~(40)~~] (42) "Issuing procurement unit" means a procurement unit that:

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

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

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

298 [~~(41)~~] (43) "Judicial procurement unit" means:

299 (a) the Utah Supreme Court;

300 (b) the Utah Court of Appeals;

301 (c) the Judicial Council;

302 (d) a state judicial district; or

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

305 [~~(42)~~] (44) "Labor hour contract" is a contract under which:

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

309 [~~(43)~~] (45) "Legislative procurement unit" means:

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

320 [~~(44)~~] (46) "Local building authority" means the same as that term is defined in Section
321 [17D-2-102](#).

322 [~~(45)~~] (47) "Local government procurement unit" means:

- 323 (a) a county, municipality, [~~or~~] interlocal entity, or project entity, and each office of the
324 county, municipality, interlocal entity, or project entity, unless:

- 325 (i) the county or municipality adopts a procurement code by ordinance; [~~or~~]
326 (ii) the interlocal entity adopts procurement rules or policies as provided in Subsection
327 [11-13-226\(2\)](#); or

328 [~~(ii)~~] (iii) the project entity adopts a procurement code through the process described in
329 Section [11-13-316](#);

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

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

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

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

337 (ii) a term in the ordinance is used in the language a project entity adopts in its

338 procurement code through the process described in Section [11-13-316](#).

339 ~~[(46)]~~ [\(48\)](#) "Multiple award contracts" means the award of a contract for an indefinite
340 quantity of a procurement item to more than one person.

341 ~~[(47)]~~ [\(49\)](#) "Multiyear contract" means a contract that extends beyond a one-year
342 period, including a contract that permits renewal of the contract, without competition, beyond
343 the first year of the contract.

344 ~~[(48)]~~ [\(50\)](#) "Municipality" means a city, town, or metro township.

345 ~~[(49)]~~ [\(51\)](#) "Nonadopting local government procurement unit" means:

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

349 (b) each office or agency of a county or municipality described in Subsection ~~[(49)(a)]~~
350 [\(51\)\(a\)](#).

351 ~~[(50)]~~ [\(52\)](#) "Offeror" means a person who submits a proposal in response to a request
352 for proposals.

353 ~~[(51)]~~ [\(53\)](#) "Preferred bidder" means a bidder that is entitled to receive a reciprocal
354 preference under the requirements of this chapter.

355 ~~[(52)]~~ [\(54\)](#) "Procure" means to acquire a procurement item through a procurement.

356 ~~[(53)]~~ [\(55\)](#) "Procurement" means the acquisition of a procurement item through an
357 expenditure of public funds, or an agreement to expend public funds, including an acquisition
358 through a public-private partnership.

359 ~~[(54)]~~ [\(56\)](#) "Procurement item" means an item of personal property, a technology, a
360 service, or a construction project.

361 ~~[(55)]~~ [\(57\)](#) "Procurement official" means:

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

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

366 (c) for a judicial procurement unit, the Judicial Council or an individual or body

367 designated by the Judicial Council by rule;

368 (d) for a local government procurement unit:

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

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

371 (e) for a special district, the board of trustees of the special district or the board of
372 trustees' designee;

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

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

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

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

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

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

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

387 (m) for the State Board of Education, the State Board of Education or the State Board
388 of Education's designee;

389 (n) for the Utah Board of Higher Education, the Commissioner of Higher Education or
390 the designee of the Commissioner of Higher Education;

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

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

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

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

407 (iv) for the Department of Health and Human Services, and only to the extent of the
 408 procurement activities of the Department of Health and Human Services as an independent
 409 procurement unit, the executive director of the Department of Health and Human Services or
 410 the executive director's designee; ~~or~~

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

417 ~~(56)~~ (58) "Procurement unit"[:]

418 ~~(a)~~ means:

419 ~~(i)~~ (a) a legislative procurement unit;

420 ~~(ii)~~ (b) an executive branch procurement unit;

421 ~~(iii)~~ (c) a judicial procurement unit;

422 ~~(iv)~~ (d) an educational procurement unit;

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

424 ~~(vi)~~ (f) a local government procurement unit;

425 ~~(vii)~~ (g) a special district;

426 ~~(viii)~~ (h) a special service district;

427 ~~(ix)~~ (i) a local building authority;

428 ~~(x)~~ (j) a conservation district; ~~and~~ or

429 [~~(xi)~~] (k) a public corporation~~;~~ and].

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

433 [~~(57)~~] (59) "Professional service" means labor, effort, or work that requires specialized
434 knowledge, expertise, and discretion, including labor, effort, or work in the field of:

- 435 (a) accounting;
- 436 (b) administrative law judge service;
- 437 (c) architecture;
- 438 (d) construction design and management;
- 439 (e) engineering;
- 440 (f) financial services;
- 441 (g) information technology;
- 442 (h) the law;
- 443 (i) medicine;
- 444 (j) psychiatry; or
- 445 (k) underwriting.

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

447 [~~(58)~~] (61) "Protest officer" means:

- 448 (a) for the division or an independent procurement unit:
 - 449 (i) the procurement official;
 - 450 (ii) the procurement official's designee who is an employee of the procurement unit; or
 - 451 (iii) a person designated by rule made by the rulemaking authority; or
- 452 (b) for a procurement unit other than an independent procurement unit, the chief
453 procurement officer or the chief procurement officer's designee who is an employee of the
454 division .

455 [~~(59)~~] (62) "Public corporation" means the same as that term is defined in Section
456 63E-1-102.

457 [~~(60)~~ "Project entity" means the same as that term is defined in Section ~~11-13-103~~.]

458 [~~(61)~~] (63) "Public entity" means the state or any other government entity within the
459 state that expends public funds.

460 [(62)] (64) "Public facility" means a building, structure, infrastructure, improvement,
461 or other facility of a public entity.

462 [(63)] (65) "Public funds" means money, regardless of its source, including from the
463 federal government, that is owned or held by a procurement unit.

464 [(64)] (66) "Public transit district" means a public transit district organized under Title
465 17B, Chapter 2a, Part 8, Public Transit District Act.

466 [(65)] (67) "Public-private partnership" means an arrangement or agreement, occurring
467 on or after January 1, 2017, between a procurement unit and one or more contractors to provide
468 for a public need through the development or operation of a project in which the contractor or
469 contractors share with the procurement unit the responsibility or risk of developing, owning,
470 maintaining, financing, or operating the project.

471 [(66)] (68) "Qualified vendor" means a vendor who:

472 (a) is responsible; and

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

476 [(67)] (69) "Real property" means land and any building, fixture, improvement,
477 appurtenance, structure, or other development that is permanently affixed to land.

478 [(68)] (70) "Request for information" means a nonbinding process through which a
479 procurement unit requests information relating to a procurement item.

480 [(69)] (71) "Request for proposals" means a document used to solicit proposals to
481 provide a procurement item to a procurement unit, including all other documents that are
482 attached to that document or incorporated in that document by reference.

483 [(70)] (72) "Request for proposals process" means the procurement process described
484 in Part 7, Request for Proposals.

485 [(71)] (73) "Request for statement of qualifications" means a document used to solicit
486 information about the qualifications of a person interested in responding to a potential
487 procurement, including all other documents attached to that document or incorporated in that
488 document by reference.

489 [(72)] (74) "Requirements contract" means a contract:

490 (a) under which a contractor agrees to provide a procurement unit's entire requirements

491 for certain procurement items at prices specified in the contract during the contract period; and

492 (b) that:

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

494 (ii) provides a maximum purchase limit.

495 [~~(73)~~] (75) "Responsible" means being capable, in all respects, of:

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

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

499 [~~(74)~~] (76) "Responsive" means conforming in all material respects to the requirements
500 of a solicitation.

501 [~~(75)~~] (77) "Rule" includes a policy or regulation adopted by the rulemaking authority,
502 if adopting a policy or regulation is the method the rulemaking authority uses to adopt
503 provisions that govern the applicable procurement unit.

504 [~~(76)~~] (78) "Rulemaking authority" means:

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

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

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

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

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

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

513 (D) for the Department of Health and Human Services, the executive director of the
514 Department of Health and Human Services; and

515 [~~(D)~~] (E) for any other executive branch department, division, office, or entity that has
516 statutory procurement authority outside this chapter, the governing authority of the department,
517 division, office, or entity; and

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

519 (d) for a local government procurement unit:

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

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

522 (e) for a school district or a public school, the board, except to the extent of a school
523 district's own nonadministrative rules that do not conflict with the provisions of this chapter;

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

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

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

528 (i) for a special district other than a public transit district or for a special service
529 district, the board, except to the extent that the board of trustees of the special district or the
530 governing body of the special service district makes its own rules:

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

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

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

535 (k) for the School and Institutional Trust Lands Administration, created in Section
536 53C-1-201, the School and Institutional Trust Lands Board of Trustees;

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

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

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

542 [~~77~~] (79) "Service":

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

545 (b) includes a professional service; and

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

548 [~~78~~] (80) "Small purchase process" means the procurement process described in
549 Section 63G-6a-506.

550 [~~79~~] (81) "Sole source contract" means a contract resulting from a sole source
551 procurement.

552 [~~80~~] (82) "Sole source procurement" means a procurement without competition

553 pursuant to a determination under Subsection [63G-6a-802\(1\)\(a\)](#) that there is only one source
554 for the procurement item.

555 ~~[(81)]~~ [\(83\)](#) "Solicitation" means an invitation for bids, request for proposals, or request
556 for statement of qualifications.

557 ~~[(82)]~~ [\(84\)](#) "Solicitation response" means:

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

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

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

562 ~~[(83)]~~ [\(85\)](#) "Special district" means the same as that term is defined in Section
563 [17B-1-102](#).

564 ~~[(84)]~~ [\(86\)](#) "Special service district" means the same as that term is defined in Section
565 [17D-1-102](#).

566 ~~[(85)]~~ [\(87\)](#) "Specification" means any description of the physical or functional
567 characteristics or of the nature of a procurement item included in an invitation for bids or a
568 request for proposals, or otherwise specified or agreed to by a procurement unit, including a
569 description of:

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

571 (b) preparing a procurement item for delivery.

572 ~~[(86)]~~ [\(88\)](#) "Standard procurement process" means:

573 (a) the bidding process;

574 (b) the request for proposals process;

575 (c) the approved vendor list process;

576 (d) the small purchase process; or

577 (e) the design professional procurement process.

578 ~~[(87)]~~ [\(89\)](#) "State cooperative contract" means a contract awarded by the division for
579 and in behalf of all public entities.

580 ~~[(88)]~~ [\(90\)](#) "Statement of qualifications" means a written statement submitted to a
581 procurement unit in response to a request for statement of qualifications.

582 ~~[(89)]~~ [\(91\)](#) "Subcontractor":

583 (a) means a person under contract to perform part of a contractual obligation under the

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

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

589 [~~(90)~~] (92) "Technology" means the same as "information technology," as defined in
590 Section [63A-16-102](#).

591 [~~(91)~~] (93) "Tie bid" means that the lowest responsive bids of responsible bidders are
592 identical in price.

593 [~~(92)~~] (94) "Time and materials contract" means a contract under which the contractor
594 is paid:

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

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

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

599 [~~(93)~~] (95) "Transitional costs":

600 (a) means the costs of changing:

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

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

604 (b) includes:

605 (i) training costs;

606 (ii) conversion costs;

607 (iii) compatibility costs;

608 (iv) costs associated with system downtime;

609 (v) disruption of service costs;

610 (vi) staff time necessary to implement the change;

611 (vii) installation costs; and

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

613 (c) does not include:

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

615 (ii) contract negotiation or drafting costs.

616 [~~94~~] (96) "Vendor":

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

619 (b) includes:

620 (i) a bidder;

621 (ii) an offeror;

622 (iii) an approved vendor;

623 (iv) a design professional; and

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

625 Section 3. Section **63G-6a-107.6** is amended to read:

626 **63G-6a-107.6. Exemptions from chapter.**

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

628 (a) a public entity's acquisition of a procurement item from another public entity; or

629 (b) a public entity that is not a procurement unit, including the Colorado River

630 Authority of Utah as provided in Section [63M-14-210](#).

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

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

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

638 (b) a grant;

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

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

643 (ii) the chief administrative officer of the hospital or the executive director of the
644 Department of Health and Human Services, as the case may be, makes a written finding that
645 the prices for purchasing medical supplies and medical equipment through the consortium are

646 competitive with market prices;

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

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

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

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

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

658 Section 4. Section 63G-6a-107.7 is amended to read:

659 **63G-6a-107.7. Procurement rules.**

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

663 (b) Facilities division rules governing procurement of construction projects, design
664 professional services, and leases apply to the procurement of construction projects, design
665 professional services, and leases of real property, respectively, by the facilities division.

666 (2) A rulemaking authority may not adopt rules, policies, or regulations that are
667 inconsistent with this chapter.

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

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

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

674 (4) The rules of the rulemaking authority for the executive branch procurement unit
675 shall require, for each contract and request for proposals, the inclusion of a clause that requires
676 the issuing procurement unit, for the duration of the contract, to make available contact

677 information of the winning contractor to the Department of Workforce Services in accordance
 678 with Section [35A-2-203](#). This requirement does not preclude a contractor from advertising job
 679 openings in other forums throughout the state.

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

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

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

686 Section 5. Section **63G-6a-1702** is amended to read:

687 **63G-6a-1702. Appeal to Utah State Procurement Policy Board -- Appointment of**
 688 **procurement appeals panel -- Proceedings.**

689 (1) [~~This~~] Subject to Section [63G-6a-2507](#), this part applies to all procurement units
 690 other than:

- 691 (a) a legislative procurement unit;
- 692 (b) a judicial procurement unit;
- 693 (c) a nonadopting local government procurement unit; or
- 694 (d) a public transit district.

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

- 698 (i) the day on which the written decision described in Section [63G-6a-1603](#) is:
 699 (A) personally served on the party or the party's representative; or
 700 (B) emailed or mailed to the address or email address provided by the party under

701 Subsection [63G-6a-1602](#)(4); or

702 (ii) the day on which the 30-day period described in Subsection [63G-6a-1603](#)(9) ends,
 703 if a written decision is not issued before the end of the 30-day period.

704 (b) A notice of appeal under Subsection (2)(a) shall:

705 (i) include the address of record and email address of record of the party filing the
 706 notice of appeal; and

707 (ii) be accompanied by a copy of any written protest decision.

708 (c) The deadline for appealing a protest decision may not be modified.

709 (3) A person may not base an appeal of a protest under this section on:

710 (a) a ground not specified in the person's protest under Section 63G-6a-1602; or

711 (b) new or additional evidence not considered by the protest officer.

712 (4) (a) A person may not appeal from a protest described in Section 63G-6a-1602,

713 unless:

714 (i) a decision on the protest has been issued; or

715 (ii) a decision is not issued and the 30-day period described in Subsection

716 63G-6a-1603(9), or a longer period agreed to by the parties, has passed.

717 (b) A procurement unit may not appeal a protest decision or other determination made
718 by the procurement unit's protest officer.

719 (5) (a) Within seven days after the chair of the board receives a written notice of an
720 appeal under this section, the chair shall submit a written request to the protest officer for the
721 protest appeal record.

722 (b) Within seven days after the chair receives the protest appeal record from the protest
723 officer, the appointing officer shall, in consultation with the attorney general's office:

724 (i) review the appeal to determine whether the appeal complies with the requirements
725 of Subsections (2), (3), and (4) and Section 63G-6a-1703; and

726 (ii) (A) dismiss any claim asserted in the appeal, or dismiss the appeal, without holding
727 a hearing if the appointing officer determines that the claim or appeal, respectively, fails to
728 comply with any of the requirements listed in Subsection (5)(b)(i); or

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

733 (c) A procurement appeals panel appointed under Subsection (5) ~~Ŝ~~→ ~~(a)~~ (b)(ii) ←~~Ŝ~~ shall
733a consist of an

734 odd number of at least three individuals, each of whom is:

735 (i) a member of the board; or

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

738 (d) The appointing officer shall appoint one of the members of the procurement

739 appeals panel to serve as the coordinator of the panel.

740 (e) The appointing officer may:

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

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

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

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

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

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

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

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

759 (b) A procurement appeals panel may, during an informal hearing, ask questions and
760 receive responses regarding the appeal and the protest appeal record to assist the procurement
761 appeals panel to understand the basis of the appeal and information contained in the protest
762 appeal record, but may not otherwise take any additional evidence or consider any additional
763 ground for the appeal.

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

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

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

768 (8) A procurement appeals panel:

769 (a) may dismiss an appeal if the appeal does not comply with the requirements of this

770 chapter; and

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

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

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

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

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

779 (b) If the procurement appeals panel is a public body, as defined in Section 52-4-103,
780 the procurement appeals panel shall comply with Section 52-4-205 in closing a meeting for its
781 deliberations.

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

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

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

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

790 (c) may not order that:

791 (i) a contract be awarded to a certain person;

792 (ii) a contract or solicitation be cancelled; or

793 (iii) any other action be taken other than the action described in Subsection (12)(a).

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

796 (a) expedited proceedings; and

797 (b) electronic participation in the proceedings by panel members and participants.

798 (14) The ~~State~~ **Utah** ~~Rules of Evidence~~ Rules of Evidence do not apply to a hearing held by a procurement
798a appeals
799 panel.

800 (15) Part 20, Records, applies to the records involved in the process described in this

801 section, including the decision issued by a procurement appeals panel.

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

803 **Part 25. Human Services Procurements**

804 **63G-6a-2501. Definitions.**

805 As used in this part:

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

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

808 Section 7. Section **63G-6a-2502** is enacted to read:

809 **63G-6a-2502. Procurement advisory council -- Appointment.**

810 The executive director may appoint an advisory council to advise and make
811 recommendations to the department on the procurement of a human services procurement item,
812 including recommendations regarding persons to be debarred or suspended under Section
813 63G-6a-2504.

814 Section 8. Section **63G-6a-2503** is enacted to read:

815 **63G-6a-2503. Direct purchase procurement process requirements -- Payment**
816 **information on website.**

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

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

821 (b) assistance payments on behalf of an individual that are intended to keep the
822 individual out of a higher level of care or prevent or reduce the need for additional department
823 services;

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

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

829 (e) adoption subsidy and maintenance payments;

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

831 (g) death investigation services; or

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

834 (2) The department shall:

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

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

839 Section 9. Section **63G-6a-2504** is enacted to read:

840 **63G-6a-2504. Process for an invitation to provide a human services procurement**
841 **item -- Open-ended invitations.**

842 (1) As used in this section:

843 (a) "Invitation" means a solicitation or other request seeking qualified providers to
844 enter a contract to provide a human services procurement item.

845 (b) "Open-ended invitation" means an invitation that does not provide for a set closing
846 date.

847 (c) "Qualified provider" means a provider of a human services procurement item that
848 meets the qualifications described in the invitation.

849 (2) The department may contract with another person for a human services
850 procurement item in accordance with the process described in this section.

851 (3) (a) The department may issue an invitation that includes:

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

854 (ii) (A) the time period for which the invitation will remain open for applications; or

855 (B) if the invitation is an open-ended invitation, a statement that there is no set closing
856 date for the invitation;

857 (iii) the requirements the department has established for the submission of an
858 application;

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

861 (v) the qualifications a provider is required to meet to be awarded a contract for the
862 human ~~service~~ **services** procurement item; and

863 (vi) the required terms and conditions of a contract if awarded.

864 (b) The department shall publish the invitation in accordance with the notice
865 requirements for a solicitation described in Section [63G-6a-2506](#).

866 (c) The department may:

867 (i) provide for an indeterminate or specified time period for a provider to respond to
868 the invitation;

869 (ii) close an invitation if the need for additional providers for a human services
870 procurement item no longer exists; or

871 (iii) reissue an invitation after closing the invitation.

872 (d) The department may provide technical application assistance to a person applying ~~Ŝ~~ **→ in**
872a **response** ~~←Ŝ~~
873 to an invitation.

874 (4) (a) Upon receipt of an application submitted in response to an invitation, the
875 department shall:

876 (i) review the application to determine:

877 (A) the application's compliance with the requirements referred to in Subsection
878 (3)(a)(iii); and

879 (B) whether the person that submitted the application meets the qualifications referred
880 to in Subsection (3)(a)(v);

881 (ii) award a contract to a person:

882 (A) whose application complies with the requirements referred to in Subsection
883 (3)(a)(iii); and

884 (B) that meets the qualifications referred to in Subsection (3)(a)(v); and

885 (iii) reject an application if:

886 (A) the application does not comply with the requirements referred to in Subsection
887 (3)(a)(iii); or

888 (B) the person that submitted the application does not meet the qualifications referred
889 to in Subsection (3)(a)(v).

890 (b) If the department closes an invitation, the department may reject an application
891 submitted before the invitation is closed.

892 (c) The department may allow a person to correct deficiencies in an application during
893 the department's review of the application under Subsection (4)(a).

894 (5) If a person's application is rejected under Subsection (4):

895 (a) the department shall notify the person of the rejection in writing; and

896 (b) the person may not reapply to the same invitation for at least 12 months after the
897 day on which the rejection is issued.

898 (6) (a) The department may award a perpetual contract under this section if the contract
899 is awarded pursuant to an open-ended invitation.

900 (b) Subsection (6)(a) does not prevent the department from terminating a perpetual
901 contract, under terms established in the contract, if the open-ended invitation terminates.

902 (7) The department may make rules to establish procedures to ensure the open
903 enrollment invitation process described in this section is administered in an open and fair
904 manner that provides any interested, qualified provider the ability to be awarded a contract.

905 Section 10. Section **63G-6a-2505** is enacted to read:

906 **63G-6a-2505. Debarred or suspension from consideration for award of contracts.**

907 (1) The executive director may:

908 (a) debar or suspend a person from consideration for an award of a contract for a
909 human services procurement item for any amount of time in accordance with the process
910 described in Subsection [63G-6a-904\(1\)](#); and

911 (b) obtain the recommendation of the council before debarring or suspending the
912 person.

913 (2) The council shall recommend that the executive director debar or suspend a person
914 for an award of a contract for a human services procurement item if the person:

915 (a) is convicted of a criminal offense:

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

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

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

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

922 (c) commits two or more violations of department rules made in accordance with Title
923 63G, Chapter 3, Utah Administrative Rulemaking Act;

924 (d) violates this chapter;

925 (e) poses a significant risk of harm to department clients or the department;
926 (f) is barred or suspended from providing services to another governmental agency; or
927 (g) takes another action that the council determines is fraudulent or substantially affects
928 the person's ability to perform under a contract with the department for a human services
929 procurement item.

930 Section 11. Section **63G-6a-2506** is enacted to read:

931 **63G-6a-2506. Public notice requirements.**

932 (1) The department may post notice of a solicitation in accordance with Subsection
933 63G-6a-112(1) at least three days before the day of the deadline for submission of a solicitation
934 response.

935 (2) The department may reduce the three-day period described in Subsection (1) in
936 accordance with Subsection 63G-6a-112(2).

937 Section 12. Section **63G-6a-2507** is enacted to read:

938 **63G-6a-2507. Human services procurement appeals process.**

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

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

945 Section 13. **Effective date.**

946 This bill takes effect on May 1, 2024.