

Division of Purchasing and General Services Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Val L. Peterson

LONG TITLE**Committee Note:**

The Government Operations Interim Committee recommended this bill.

Legislative Vote: 9 voting for 0 voting against 7 absent

General Description:

This bill modifies the Utah Procurement Code.

Highlighted Provisions:

This bill:

- defines a term;
- eliminates the option of the Purchasing from Persons with Disabilities Advisory Board (PPDAB) to form a central not-for-profit association to assist the PPDAB with its functions, and authorizes the PPDAB to contract with a person to assist the PPDAB with its functions;
- codifies that awarding a contract to a vendor is not the creation of a contract with the vendor;
- prohibits including certain contractual terms in a procurement contract, unless the assistant attorney general grants a specific exemption; and
- makes technical and conforming corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-6a-103, as last amended by Laws of Utah 2024, Chapters 291, 408 and 438

63G-6a-109, as last amended by Laws of Utah 2022, Chapter 421

63G-6a-303, as last amended by Laws of Utah 2023, Chapter 43

63G-6a-506, as last amended by Laws of Utah 2021, Chapter 344

63G-6a-805, as last amended by Laws of Utah 2016, Chapter 271

32 **63G-6a-1203**, as last amended by Laws of Utah 2015, Chapter 218

33 ENACTS:

34 **63G-6a-1201.5**, Utah Code Annotated 1953

35

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

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

38 **63G-6a-103 . Definitions.**

39 As used in this chapter:

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

42 (2) "Approved vendor list" means a list of approved vendors established under Section
43 63G-6a-507.

44 (3) "Approved vendor list process" means the procurement process described in Section
45 63G-6a-507.

46 (4)(a) "Award" means, in relation to a contract, a procurement unit's selection of a
47 vendor to supply a procurement item after the procurement unit engages in:

48 (i) a standard procurement process; or

49 (ii) an exception to a standard procurement process under Part 8, Exceptions to
50 Procurement Requirements.

51 (b) "Award" does not mean, in relation to a contract, a procurement unit's offer or
52 acceptance of any terms or conditions related to the procurement unit's acquisition or
53 receipt of the procurement item.

54 [(4)] (5) "Bidder" means a person who submits a bid or price quote in response to an
55 invitation for bids.

56 [(5)] (6) "Bidding process" means the procurement process described in Part 6, Bidding.

57 [(6)] (7) "Board" means the Utah State Procurement Policy Board, created in Section
58 63G-6a-202.

59 [(7)] (8) "Change directive" means a written order signed by the procurement officer that
60 directs the contractor to suspend work or make changes, as authorized by contract,
61 without the consent of the contractor.

62 [(8)] (9) "Change order" means a written alteration in specifications, delivery point, rate of
63 delivery, period of performance, price, quantity, or other provisions of a contract, upon
64 mutual agreement of the parties to the contract.

65 [(9)] (10) "Chief procurement officer" means the individual appointed under Section

66 63A-2-102.

67 [~~(10)~~] (11) "Conducting procurement unit" means a procurement unit that conducts all
68 aspects of a procurement:

69 (a) except:

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

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

72 (b) including:

73 (i) preparing any solicitation document;

74 (ii) appointing an evaluation committee;

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

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

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

80 (vi) contract administration.

81 [~~(11)~~] (12) "Conservation district" means the same as that term is defined in Section
82 17D-3-102.

83 [~~(12)~~] (13) "Construction project":

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

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

89 [~~(13)~~] (14) "Construction manager/general contractor":

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

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

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

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

99 [~~(14)~~] (15) "Construction subcontractor":

- 100 (a) means a person under contract with a contractor or another subcontractor to provide
101 services or labor for the design or construction of a construction project;
- 102 (b) includes a general contractor or specialty contractor licensed or exempt from
103 licensing under Title 58, Chapter 55, Utah Construction Trades Licensing Act; and
- 104 (c) does not include a supplier who provides only materials, equipment, or supplies to a
105 contractor or subcontractor for a construction project.
- 106 ~~[(15)]~~ (16) "Contract" means an agreement for a procurement.
- 107 ~~[(16)]~~ (17) "Contract administration" means all functions, duties, and responsibilities
108 associated with managing, overseeing, and carrying out a contract between a
109 procurement unit and a contractor, including:
- 110 (a) implementing the contract;
- 111 (b) ensuring compliance with the contract terms and conditions by the conducting
112 procurement unit and the contractor;
- 113 (c) executing change orders;
- 114 (d) processing contract amendments;
- 115 (e) resolving, to the extent practicable, contract disputes;
- 116 (f) curing contract errors and deficiencies;
- 117 (g) terminating a contract;
- 118 (h) measuring or evaluating completed work and contractor performance;
- 119 (i) computing payments under the contract; and
- 120 (j) closing out a contract.
- 121 ~~[(17)]~~ (18) "Contractor" means a person who is awarded a contract with a procurement unit.
- 122 ~~[(18)]~~ (19) "Cooperative procurement" means procurement conducted by, or on behalf of:
- 123 (a) more than one procurement unit; or
- 124 (b) a procurement unit and a cooperative purchasing organization.
- 125 ~~[(19)]~~ (20) "Cooperative purchasing organization" means an organization, association, or
126 alliance of purchasers established to combine purchasing power in order to obtain the
127 best value for the purchasers by engaging in procurements in accordance with Section
128 63G-6a-2105.
- 129 ~~[(20)]~~ (21) "Cost-plus-a-percentage-of-cost contract" means a contract under which the
130 contractor is paid a percentage of the total actual expenses or costs in addition to the
131 contractor's actual expenses or costs.
- 132 ~~[(21)]~~ (22) "Cost-reimbursement contract" means a contract under which a contractor is
133 reimbursed for costs which are allowed and allocated in accordance with the contract

- 134 terms and the provisions of this chapter, and a fee, if any.
- 135 [~~(22)~~] (23) "Days" means calendar days, unless expressly provided otherwise.
- 136 [~~(23)~~] (24) "Definite quantity contract" means a fixed price contract that provides for a
 137 specified amount of supplies over a specified period, with deliveries scheduled
 138 according to a specified schedule.
- 139 [~~(24)~~] (25) "Design professional" means:
- 140 (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects
 141 Licensing Act;
- 142 (b) an individual licensed as a professional engineer or professional land surveyor under
 143 Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors
 144 Licensing Act;
- 145 (c) an individual licensed under Title 58, Chapter 53, Landscape Architects Licensing
 146 Act, to engage in the practice of landscape architecture, as defined in Section
 147 58-53-102; or
- 148 (d) an individual certified as a commercial interior designer under Title 58, Chapter 86,
 149 State Certification of Commercial Interior Designers Act.
- 150 [~~(25)~~] (26) "Design professional procurement process" means the procurement process
 151 described in Part 15, Design Professional Services.
- 152 [~~(26)~~] (27) "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;
- 157 (d) professional services within the scope of the practice of landscape architecture, as
 158 defined in Section 58-53-102; or
- 159 (e) services within the scope of the practice of commercial interior design, as defined in
 160 Section 58-86-102.
- 161 [~~(27)~~] (28) "Design-build" means the procurement of design professional services and
 162 construction by the use of a single contract.
- 163 [~~(28)~~] (29) "Division" means the Division of Purchasing and General Services, created in
 164 Section 63A-2-101.
- 165 [~~(29)~~] (30) "Educational procurement unit" means:
- 166 (a) a school district;
- 167 (b) a public school, including a local school board or a charter school;

- 168 (c) the Utah Schools for the Deaf and the Blind;
- 169 (d) the Utah Education and Telehealth Network;
- 170 (e) an institution of higher education of the state described in Section 53B-1-102; or
- 171 (f) the State Board of Education.
- 172 ~~[(30)]~~ (31) "Established catalogue price" means the price included in a catalogue, price list,
- 173 schedule, or other form that:
- 174 (a) is regularly maintained by a manufacturer or contractor;
- 175 (b) is published or otherwise available for inspection by customers; and
- 176 (c) states prices at which sales are currently or were last made to a significant number of
- 177 any category of buyers or buyers constituting the general buying public for the
- 178 supplies or services involved.
- 179 ~~[(31)]~~ (32)(a) "Executive branch procurement unit" means a department, division, office,
- 180 bureau, agency, or other organization within the state executive branch.
- 181 (b) "Executive branch procurement unit" does not include the Colorado River Authority
- 182 of Utah as provided in Section 63M-14-210.
- 183 ~~[(32)]~~ (33) "Facilities division" means the Division of Facilities Construction and
- 184 Management, created in Section 63A-5b-301.
- 185 ~~[(33)]~~ (34) "Fixed price contract" means a contract that provides a price, for each
- 186 procurement item obtained under the contract, that is not subject to adjustment except to
- 187 the extent that:
- 188 (a) the contract provides, under circumstances specified in the contract, for an
- 189 adjustment in price that is not based on cost to the contractor; or
- 190 (b) an adjustment is required by law.
- 191 ~~[(34)]~~ (35) "Fixed price contract with price adjustment" means a fixed price contract that
- 192 provides for an upward or downward revision of price, precisely described in the
- 193 contract, that:
- 194 (a) is based on the consumer price index or another commercially acceptable index,
- 195 source, or formula; and
- 196 (b) is not based on a percentage of the cost to the contractor.
- 197 ~~[(35)]~~ (36) "Grant" means an expenditure of public funds or other assistance, or an
- 198 agreement to expend public funds or other assistance, for a public purpose authorized by
- 199 law, without acquiring a procurement item in exchange.
- 200 ~~[(36)]~~ (37) "Human services procurement item" means a procurement item used to provide
- 201 services or support to a child, youth, adult, or family.

- 202 [(37)] (38) "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
- 207 vendors; and
- 208 (b) includes:
- 209 (i) a missing signature, missing acknowledgment of an addendum, or missing copy of
- 210 a professional license, bond, or insurance certificate;
- 211 (ii) a typographical error;
- 212 (iii) an error resulting from an inaccuracy or omission in the solicitation; and
- 213 (iv) any other error that the procurement official reasonably considers to be
- 214 immaterial.
- 215 [(38)] (39) "Indefinite quantity contract" means a fixed price contract that:
- 216 (a) is for an indefinite amount of procurement items to be supplied as ordered by a
- 217 procurement unit; and
- 218 (b)(i) does not require a minimum purchase amount; or
- 219 (ii) provides a maximum purchase limit.
- 220 [(39)] (40) "Independent procurement unit" means:
- 221 (a)(i) a legislative procurement unit;
- 222 (ii) a judicial branch procurement unit;
- 223 (iii) an educational procurement unit;
- 224 (iv) a local government procurement unit;
- 225 (v) a conservation district;
- 226 (vi) a local building authority;
- 227 (vii) a special district;
- 228 (viii) a public corporation;
- 229 (ix) a special service district; or
- 230 (x) the Utah Communications Authority, established in Section 63H-7a-201;
- 231 (b) the facilities division, but only to the extent of the procurement authority provided
- 232 under Title 63A, Chapter 5b, Administration of State Facilities;
- 233 (c) the attorney general, but only to the extent of the procurement authority provided
- 234 under Title 67, Chapter 5, Attorney General;
- 235 (d) the Department of Transportation, but only to the extent of the procurement authority

- 236 provided under Title 72, Transportation Code;
- 237 (e) the Department of Health and Human Services, but only for the procurement of a
238 human services procurement item; or
- 239 (f) any other executive branch department, division, office, or entity that has statutory
240 procurement authority outside this chapter, but only to the extent of that statutory
241 procurement authority.
- 242 ~~[(40)]~~ (41)(a) "Interlocal entity" means a separate political subdivision created under
243 Title 11, Chapter 13, Interlocal Cooperation Act.
- 244 (b) "Interlocal entity" does not include a project entity.
- 245 ~~[(41)]~~ (42) "Invitation for bids":
- 246 (a) means a document used to solicit:
- 247 (i) bids to provide a procurement item to a procurement unit; or
248 (ii) quotes for a price of a procurement item to be provided to a procurement unit; and
- 249 (b) includes all documents attached to or incorporated by reference in a document
250 described in Subsection ~~[(41)(a)]~~ (42)(a).
- 251 ~~[(42)]~~ (43) "Issuing procurement unit" means a procurement unit that:
- 252 (a) reviews a solicitation to verify that it is in proper form;
253 (b) causes the notice of a solicitation to be published; and
254 (c) negotiates and approves the terms and conditions of a contract.
- 255 ~~[(43)]~~ (44) "Judicial procurement unit" means:
- 256 (a) the Utah Supreme Court;
257 (b) the Utah Court of Appeals;
258 (c) the Judicial Council;
259 (d) a state judicial district; or
260 (e) an office, committee, subcommittee, or other organization within the state judicial
261 branch.
- 262 ~~[(44)]~~ (45) "Labor hour contract" is a contract under which:
- 263 (a) the supplies and materials are not provided by, or through, the contractor; and
264 (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and profit
265 for a specified number of labor hours or days.
- 266 ~~[(45)]~~ (46) "Legislative procurement unit" means:
- 267 (a) the Legislature;
268 (b) the Senate;
269 (c) the House of Representatives;

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

278 [~~46~~] (47) "Local building authority" means the same as that term is defined in Section
 279 17D-2-102.

280 [~~47~~] (48) "Local government procurement unit" means:

- 281 (a) a county, municipality, interlocal entity, or project entity, and each office of the
 282 county, municipality, interlocal entity, or project entity, unless:
 283 (i) the county or municipality adopts a procurement code by ordinance;
 284 (ii) the interlocal entity adopts procurement rules or policies as provided in
 285 Subsection 11-13-226(2); or
 286 (iii) the project entity adopts a procurement code through the process described in
 287 Section 11-13-316;
 288 (b)(i) a county or municipality that has adopted this entire chapter by ordinance, and
 289 each office or agency of that county or municipality; and
 290 (ii) a project entity that has adopted this entire chapter through the process described
 291 in Subsection 11-13-316; or
 292 (c) a county, municipality, or project entity, and each office of the county, municipality,
 293 or project entity that has adopted a portion of this chapter to the extent that:
 294 (i) a term in the ordinance is used in the adopted chapter; or
 295 (ii) a term in the ordinance is used in the language a project entity adopts in its
 296 procurement code through the process described in Section 11-13-316.

297 [~~48~~] (49) "Multiple award contracts" means the award of a contract for an indefinite
 298 quantity of a procurement item to more than one person.

299 [~~49~~] (50) "Multiyear contract" means a contract that extends beyond a one-year period,
 300 including a contract that permits renewal of the contract, without competition, beyond
 301 the first year of the contract.

302 [~~50~~] (51) "Municipality" means a city or town.

303 [~~51~~] (52) "Nonadopting local government procurement unit" means:

- 304 (a) a county or municipality that has not adopted Part 16, Protests, Part 17, Procurement
305 Appeals Board, Part 18, Appeals to Court and Court Proceedings, and Part 19,
306 General Provisions Related to Protest or Appeal; and
- 307 (b) each office or agency of a county or municipality described in Subsection [~~(51)~~(a)]
308 ~~(52)~~(a).
- 309 [~~(52)~~] (53) "Offeror" means a person who submits a proposal in response to a request for
310 proposals.
- 311 [~~(53)~~] (54) "Preferred bidder" means a bidder that is entitled to receive a reciprocal
312 preference under the requirements of this chapter.
- 313 [~~(54)~~] (55) "Procure" means to acquire a procurement item through a procurement.
- 314 [~~(55)~~] (56) "Procurement" means the acquisition of a procurement item through an
315 expenditure of public funds, or an agreement to expend public funds, including an
316 acquisition through a public-private partnership.
- 317 [~~(56)~~] (57) "Procurement item" means an item of personal property, a technology, a service,
318 or a construction project.
- 319 [~~(57)~~] (58) "Procurement official" means:
- 320 (a) for a procurement unit other than an independent procurement unit, the chief
321 procurement officer;
- 322 (b) for a legislative procurement unit, the individual, individuals, or body designated in a
323 policy adopted by the Legislative Management Committee;
- 324 (c) for a judicial procurement unit, the Judicial Council or an individual or body
325 designated by the Judicial Council by rule;
- 326 (d) for a local government procurement unit:
- 327 (i) the legislative body of the local government procurement unit; or
328 (ii) an individual or body designated by the local government procurement unit;
- 329 (e) for a special district, the board of trustees of the special district or the board of
330 trustees' designee;
- 331 (f) for a special service district, the governing body of the special service district or the
332 governing body's designee;
- 333 (g) for a local building authority, the board of directors of the local building authority or
334 the board of directors' designee;
- 335 (h) for a conservation district, the board of supervisors of the conservation district or the
336 board of supervisors' designee;
- 337 (i) for a public corporation, the board of directors of the public corporation or the board

- 338 of directors' designee;
- 339 (j) for a school district or any school or entity within a school district, the board of the
340 school district or the board's designee;
- 341 (k) for a charter school, the individual or body with executive authority over the charter
342 school or the designee of the individual or body;
- 343 (l) for an institution of higher education described in Section 53B-2-101, the president of
344 the institution of higher education or the president's designee;
- 345 (m) for the State Board of Education, the State Board of Education or the State Board of
346 Education's designee;
- 347 (n) for the Utah Board of Higher Education, the Commissioner of Higher Education or
348 the designee of the Commissioner of Higher Education;
- 349 (o) for the Utah Communications Authority, established in Section 63H-7a-201, the
350 executive director of the Utah Communications Authority or the executive director's
351 designee; or
- 352 (p)(i) for the facilities division, and only to the extent of procurement activities of
353 the facilities division as an independent procurement unit under the procurement
354 authority provided under Title 63A, Chapter 5b, Administration of State Facilities,
355 the director of the facilities division or the director's designee;
- 356 (ii) for the attorney general, and only to the extent of procurement activities of the
357 attorney general as an independent procurement unit under the procurement
358 authority provided under Title 67, Chapter 5, Attorney General, the attorney
359 general or the attorney general's designee;
- 360 (iii) for the Department of Transportation created in Section 72-1-201, and only to
361 the extent of procurement activities of the Department of Transportation as an
362 independent procurement unit under the procurement authority provided under
363 Title 72, Transportation Code, the executive director of the Department of
364 Transportation or the executive director's designee;
- 365 (iv) for the Department of Health and Human Services, and only to the extent of the
366 procurement activities of the Department of Health and Human Services as an
367 independent procurement unit, the executive director of the Department of Health
368 and Human Services or the executive director's designee; or
- 369 (v) for any other executive branch department, division, office, or entity that has
370 statutory procurement authority outside this chapter, and only to the extent of the
371 procurement activities of the department, division, office, or entity as an

372 independent procurement unit under the procurement authority provided outside
 373 this chapter for the department, division, office, or entity, the chief executive
 374 officer of the department, division, office, or entity or the chief executive officer's
 375 designee.

376 [~~(58)~~] (59) "Procurement unit" means:

- 377 (a) a legislative procurement unit;
- 378 (b) an executive branch procurement unit;
- 379 (c) a judicial procurement unit;
- 380 (d) an educational procurement unit;
- 381 (e) the Utah Communications Authority, established in Section 63H-7a-201;
- 382 (f) a local government procurement unit;
- 383 (g) a special district;
- 384 (h) a special service district;
- 385 (i) a local building authority;
- 386 (j) a conservation district; or
- 387 (k) a public corporation.

388 [~~(59)~~] (60) "Professional service" means labor, effort, or work that requires specialized
 389 knowledge, expertise, and discretion, including labor, effort, or work in the field of:

- 390 (a) accounting;
- 391 (b) administrative law judge service;
- 392 (c) architecture;
- 393 (d) construction design and management;
- 394 (e) engineering;
- 395 (f) financial services;
- 396 (g) information technology;
- 397 (h) the law;
- 398 (i) medicine;
- 399 (j) psychiatry; or
- 400 (k) underwriting.

401 [~~(60)~~] (61) "Project entity" means the same as that term is defined in Section 11-13-103.

402 [~~(61)~~] (62) "Protest officer" means:

- 403 (a) for the division or an independent procurement unit:
 - 404 (i) the procurement official;
 - 405 (ii) the procurement official's designee who is an employee of the procurement unit;

406 or

407 (iii) a person designated by rule made by the rulemaking authority; or

408 (b) for a procurement unit other than an independent procurement unit, the chief

409 procurement officer or the chief procurement officer's designee who is an employee

410 of the division .

411 ~~[(62)]~~ (63) "Public corporation" means the same as that term is defined in Section 63E-1-102.

412 ~~[(63)]~~ (64) "Public entity" means the state or any other government entity within the state

413 that expends public funds.

414 ~~[(64)]~~ (65) "Public facility" means a building, structure, infrastructure, improvement, or

415 other facility of a public entity.

416 ~~[(65)]~~ (66) "Public funds" means money, regardless of its source, including from the federal

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

418 ~~[(66)]~~ (67) "Public transit district" means a public transit district organized under Title 17B,

419 Chapter 2a, Part 8, Public Transit District Act.

420 ~~[(67)]~~ (68) "Public-private partnership" means an arrangement or agreement, occurring on

421 or after January 1, 2017, between a procurement unit and one or more contractors to

422 provide for a public need through the development or operation of a project in which the

423 contractor or contractors share with the procurement unit the responsibility or risk of

424 developing, owning, maintaining, financing, or operating the project.

425 ~~[(68)]~~ (69) "Qualified vendor" means a vendor who:

426 (a) is responsible; and

427 (b) submits a responsive statement of qualifications under Section 63G-6a-410 that

428 meets the minimum mandatory requirements, evaluation criteria, and any applicable

429 score thresholds set forth in the request for statement of qualifications.

430 ~~[(69)]~~ (70) "Real property" means land and any building, fixture, improvement,

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

432 ~~[(70)]~~ (71) "Request for information" means a nonbinding process through which a

433 procurement unit requests information relating to a procurement item.

434 ~~[(71)]~~ (72) "Request for proposals" means a document used to solicit proposals to provide a

435 procurement item to a procurement unit, including all other documents that are attached

436 to that document or incorporated in that document by reference.

437 ~~[(72)]~~ (73) "Request for proposals process" means the procurement process described in Part

438 7, Request for Proposals.

439 ~~[(73)]~~ (74) "Request for statement of qualifications" means a document used to solicit

440 information about the qualifications of a person interested in responding to a potential
441 procurement, including all other documents attached to that document or incorporated in
442 that document by reference.

443 [~~(74)~~] (75) "Requirements contract" means a contract:

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

447 (b) that:

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

449 (ii) provides a maximum purchase limit.

450 [~~(75)~~] (76) "Responsible" means being capable, in all respects, of:

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

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

455 [~~(76)~~] (77) "Responsive" means conforming in all material respects to the requirements of a
456 solicitation.

457 [~~(77)~~] (78) "Rule" includes a policy or regulation adopted by the rulemaking authority, if
458 adopting a policy or regulation is the method the rulemaking authority uses to adopt
459 provisions that govern the applicable procurement unit.

460 [~~(78)~~] (79) "Rulemaking authority" means:

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

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

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

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

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

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

469 (D) for the Department of Health and Human Services, the executive director of
470 the Department of Health and Human Services; and

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

- 474 (ii) for each other executive branch procurement unit, the board;
- 475 (d) for a local government procurement unit:
- 476 (i) the governing body of the local government unit; or
- 477 (ii) an individual or body designated by the local government procurement unit;
- 478 (e) for a school district or a public school, the board, except to the extent of a school
- 479 district's own nonadministrative rules that do not conflict with the provisions of this
- 480 chapter;
- 481 (f) for a state institution of higher education, the Utah Board of Higher Education;
- 482 (g) for the State Board of Education or the Utah Schools for the Deaf and the Blind, the
- 483 State Board of Education;
- 484 (h) for a public transit district, the chief executive of the public transit district;
- 485 (i) for a special district other than a public transit district or for a special service district,
- 486 the board, except to the extent that the board of trustees of the special district or the
- 487 governing body of the special service district makes its own rules:
- 488 (i) with respect to a subject addressed by board rules; or
- 489 (ii) that are in addition to board rules;
- 490 (j) for the Utah Educational Savings Plan, created in Section 53B-8a-103, the Utah
- 491 Board of Higher Education;
- 492 (k) for the School and Institutional Trust Lands Administration, created in Section
- 493 53C-1-201, the School and Institutional Trust Lands Board of Trustees;
- 494 (l) for the School and Institutional Trust Fund Office, created in Section 53D-1-201, the
- 495 School and Institutional Trust Fund Board of Trustees;
- 496 (m) for the Utah Communications Authority, established in Section 63H-7a-201, the
- 497 Utah Communications Authority board, created in Section 63H-7a-203; or
- 498 (n) for any other procurement unit, the board.
- 499 [~~79~~] (80) "Service":
- 500 (a) means labor, effort, or work to produce a result that is beneficial to a procurement
- 501 unit;
- 502 (b) includes a professional service; and
- 503 (c) does not include labor, effort, or work provided under an employment agreement or a
- 504 collective bargaining agreement.
- 505 [~~80~~] (81) "Small purchase process" means the procurement process described in Section
- 506 63G-6a-506.
- 507 [~~81~~] (82) "Sole source contract" means a contract resulting from a sole source procurement.

508 ~~[(82)]~~ (83) "Sole source procurement" means a procurement without competition pursuant to
509 a determination under Subsection 63G-6a-802(1)(a) that there is only one source for the
510 procurement item.

511 ~~[(83)]~~ (84) "Solicitation" means an invitation for bids, request for proposals, or request for
512 statement of qualifications.

513 ~~[(84)]~~ (85) "Solicitation response" means:

- 514 (a) a bid submitted in response to an invitation for bids;
- 515 (b) a proposal submitted in response to a request for proposals; or
- 516 (c) a statement of qualifications submitted in response to a request for statement of
517 qualifications.

518 ~~[(85)]~~ (86) "Special district" means the same as that term is defined in Section 17B-1-102.

519 ~~[(86)]~~ (87) "Special service district" means the same as that term is defined in Section
520 17D-1-102.

521 ~~[(87)]~~ (88) "Specification" means any description of the physical or functional
522 characteristics or of the nature of a procurement item included in an invitation for bids
523 or a request for proposals, or otherwise specified or agreed to by a procurement unit,
524 including a description of:

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

527 ~~[(88)]~~ (89) "Standard procurement process" means:

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

533 ~~[(89)]~~ (90) "State cooperative contract" means a contract awarded by the division for and in
534 behalf of all public entities.

535 ~~[(90)]~~ (91) "Statement of qualifications" means a written statement submitted to a
536 procurement unit in response to a request for statement of qualifications.

537 ~~[(91)]~~ (92) "Subcontractor":

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

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

544 [(92)] (93) "Technology" means the same as "information technology," as defined in Section
545 63A-16-102.

546 [(93)] (94) "Tie bid" means that the lowest responsive bids of responsible bidders are
547 identical in price.

548 [(94)] (95) "Time and materials contract" means a contract under which the contractor is
549 paid:

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

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

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

554 [(95)] (96) "Transitional costs":

555 (a) means the costs of changing:

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

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

559 (b) includes:

560 (i) training costs;

561 (ii) conversion costs;

562 (iii) compatibility costs;

563 (iv) costs associated with system downtime;

564 (v) disruption of service costs;

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

566 (vii) installation costs; and

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

568 (c) does not include:

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

570 (ii) contract negotiation or drafting costs.

571 [(96)] (97) "Vendor":

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

574 (b) includes:

575 (i) a bidder;

- 576 (ii) an offeror;
- 577 (iii) an approved vendor;
- 578 (iv) a design professional; and
- 579 (v) a person who submits an unsolicited proposal under Section 63G-6a-712.

580 Section 2. Section **63G-6a-109** is amended to read:

581 **63G-6a-109 . Issuing procurement unit and conducting procurement unit.**

- 582 (1) With respect to a procurement by an executive branch procurement unit, except for a
- 583 procurement by an executive branch procurement unit that, under Subsection [
- 584 ~~63G-6a-103(38)(b), (e), (d), or (e)] 63G-6a-103(40)(b), (c), (d), or (e), is designated as an~~
- 585 independent procurement unit:
- 586 (a) the division is the issuing procurement unit; and
- 587 (b) the executive branch procurement unit is the conducting procurement unit and is
- 588 responsible to ensure that the procurement is conducted in compliance with this
- 589 chapter.
- 590 (2) With respect to a procurement by any other procurement unit, the procurement unit is
- 591 both the issuing procurement unit and the conducting procurement unit.
- 592 (3) A conducting procurement unit is responsible for contract administration.

593 Section 3. Section **63G-6a-303** is amended to read:

594 **63G-6a-303 . Role, duties, and authority of chief procurement officer.**

- 595 (1) The chief procurement officer:
- 596 (a) is the director of the division;
- 597 (b) serves as the central procurement officer of the state;
- 598 (c) serves as a voting member of the board; and
- 599 (d) serves as the protest officer for a protest relating to a procurement of an executive
- 600 branch procurement, except an executive branch procurement unit designated under
- 601 Subsection [~~63G-6a-103(38)(b), (e), (d), or (e)] 63G-6a-103(40)(b), (c), (d), or (e) as~~
- 602 an independent procurement unit, or a state cooperative contract procurement, unless
- 603 the chief procurement officer designates another to serve as protest officer, as
- 604 authorized in this chapter.
- 605 (2) Except as otherwise provided in this chapter, the chief procurement officer shall:
- 606 (a) develop procurement policies and procedures supporting ethical procurement
- 607 practices, fair and open competition among vendors, and transparency within the
- 608 state's procurement process;
- 609 (b) administer the state's cooperative purchasing program, including state cooperative

- 610 contracts and associated administrative fees;
- 611 (c) enter into an agreement with a public entity for services provided by the division, if
612 the agreement is in the best interest of the state;
- 613 (d) ensure the division's compliance with any applicable law, rule, or policy, including a
614 law, rule, or policy applicable to the division's role as an issuing procurement unit or
615 conducting procurement unit, or as the state's central procurement organization;
- 616 (e) manage the division's electronic procurement system;
- 617 (f) oversee the recruitment, training, career development, certification requirements, and
618 performance evaluation of the division's procurement personnel;
- 619 (g) make procurement training available to procurement units and persons who do
620 business with procurement units;
- 621 (h) provide exemplary customer service and continually improve the division's
622 procurement operations;
- 623 (i) exercise all other authority, fulfill all other duties and responsibilities, and perform all
624 other functions authorized under this chapter; and
- 625 (j) ensure that any training described in this Subsection (2) complies with Chapter 22,
626 State Training and Certification Requirements.
- 627 (3) With respect to a procurement or contract over which the chief procurement officer has
628 authority under this chapter, the chief procurement officer, except as otherwise provided
629 in this chapter:
- 630 (a) shall:
- 631 (i) manage and supervise a procurement to ensure to the extent practicable that
632 taxpayers receive the best value;
- 633 (ii) prepare and issue standard specifications for procurement items;
- 634 (iii) review contracts, coordinate contract compliance, conduct contract audits, and
635 approve change orders;
- 636 (iv) in accordance with Section 63G-6a-109.5, coordinate with the Division of
637 Technology Services, created in Section 63A-16-103, with respect to the
638 procurement of information technology services by an executive branch
639 procurement unit;
- 640 (v) correct, amend, or cancel a procurement at any stage of the procurement process
641 if the procurement is out of compliance with this chapter or a board rule;
- 642 (vi) after consultation with the attorney general's office, correct, amend, or cancel a
643 contract at any time during the term of the contract if:

- 644 (A) the contract is out of compliance with this chapter or a board rule; and
645 (B) the chief procurement officer determines that correcting, amending, or
646 canceling the contract is in the best interest of the state; and
647 (vii) make a reasonable attempt to resolve a contract dispute, in coordination with the
648 attorney general's office; and
649 (b) may:
- 650 (i) delegate limited purchasing authority to a state agency, with appropriate oversight
651 and control to ensure compliance with this chapter;
 - 652 (ii) delegate duties and authority to an employee of the division, as the chief
653 procurement officer considers appropriate;
 - 654 (iii) negotiate and settle contract overcharges, undercharges, and claims, in
655 accordance with the law and after consultation with the attorney general's office;
 - 656 (iv) authorize a procurement unit to make a procurement pursuant to a regional
657 solicitation, as defined in Subsection 63G-6a-2105(7), even if the procurement
658 item is also offered under a state cooperative contract, if the chief procurement
659 officer determines that the procurement pursuant to a regional solicitation is in the
660 best interest of the acquiring procurement unit; and
 - 661 (v) remove an individual from the procurement process or contract administration for:
 - 662 (A) having a conflict of interest or the appearance of a conflict of interest with a
663 person responding to a solicitation or with a contractor;
 - 664 (B) having a bias or the appearance of bias for or against a person responding to a
665 solicitation or for or against a contractor;
 - 666 (C) making an inconsistent or unexplainable score for a solicitation response;
 - 667 (D) having inappropriate contact or communication with a person responding to a
668 solicitation;
 - 669 (E) socializing inappropriately with a person responding to a solicitation or with a
670 contractor;
 - 671 (F) engaging in any other action or having any other association that causes the
672 chief procurement officer to conclude that the individual cannot fairly evaluate
673 a solicitation response or administer a contract; or
 - 674 (G) any other violation of a law, rule, or policy.
- 675 (4) The chief procurement officer may not delegate to an individual outside the division the
676 chief procurement officer's authority over a procurement described in Subsection
677 (3)(a)(iv).

678 (5) The chief procurement officer has final authority to determine whether an executive
 679 branch procurement unit's anticipated expenditure of public funds, anticipated agreement
 680 to expend public funds, or provision of a benefit constitutes a procurement that is subject
 681 to this chapter.

682 (6) Except as otherwise provided in this chapter, the chief procurement officer shall review,
 683 monitor, and audit the procurement activities and delegated procurement authority of an
 684 executive branch procurement unit, except to the extent that an executive branch
 685 procurement unit is designated under Subsection [~~63G-6a-103(38)(b), (c), (d), or (e)~~]
 686 63G-6a-103(40)(b), (c), (d), or (e) as an independent procurement unit, to ensure
 687 compliance with this chapter, rules made by the applicable rulemaking authority, and
 688 division policies.

689 Section 4. Section **63G-6a-506** is amended to read:

690 **63G-6a-506 . Small purchases.**

691 (1) As used in this section:

692 (a) "Annual cumulative threshold" means the maximum total annual amount, established
 693 by the rulemaking authority under Subsection (2), that a procurement unit may
 694 expend to obtain procurement items from the same source under this section.

695 (b) "Individual procurement item threshold" means the maximum amount, established
 696 by the rulemaking authority under Subsection (2), for which a procurement unit may
 697 purchase a procurement item under this section.

698 (c) "Single procurement aggregate threshold" means the maximum total amount,
 699 established by the rulemaking authority under Subsection (2), that a procurement unit
 700 may expend to obtain multiple procurement items from one source at one time under
 701 this section.

702 (2)(a) The rulemaking authority may make rules governing small purchases of any
 703 procurement item, including construction, job order contracting, design professional
 704 services, other professional services, information technology, and goods.

705 (b) Rules under Subsection (2)(a) may include provisions:

706 (i) establishing expenditure thresholds, including:

707 (A) an annual cumulative threshold;

708 (B) an individual procurement item threshold; and

709 (C) a single procurement aggregate threshold;

710 (ii) establishing procurement requirements relating to the thresholds described in
 711 Subsection (2)(b)(i); and

- 712 (iii) providing for the use of electronic, telephone, or written quotes.
- 713 (c) If a procurement unit obtains administrative law judge service through a small
714 purchase standard procurement process, rules made under Subsection (2)(a) shall
715 provide that the process for the procurement of administrative law judge service
716 include an evaluation committee described in Subsection 63G-6a-116(3).
- 717 (3) Expenditures made under this section by a procurement unit may not exceed a threshold
718 established by the rulemaking authority, unless the procurement official gives written
719 authorization to exceed the threshold that includes the reasons for exceeding the
720 threshold.
- 721 (4) Except as provided in Subsection (5), an executive branch procurement unit may not
722 obtain a procurement item through a small purchase standard procurement process if the
723 procurement item may be obtained through a state cooperative contract or a contract
724 awarded by the chief procurement officer under Subsection 63G-6a-2105(1).
- 725 (5) Subsection (4) does not apply if:
- 726 (a) the procurement item is obtained for an unanticipated, urgent, or emergency
727 condition, including:
- 728 (i) an item needed to avoid stopping a public construction project;
- 729 (ii) an immediate repair to a facility or equipment; or
- 730 (iii) another emergency condition; or
- 731 (b) the chief procurement officer or the procurement official of a procurement unit that
732 is an executive branch procurement unit with independent procurement authority:
- 733 (i) determines in writing that it is in the best interest of the procurement unit to obtain
734 an individual procurement item outside of the state contract, comparing:
- 735 (A) the contract terms and conditions applicable to the procurement item under the
736 state contract with the contract terms and conditions applicable to the
737 procurement item if the procurement item is obtained outside of the state
738 contract;
- 739 (B) the maintenance and service applicable to the procurement item under the
740 state contract with the maintenance and service applicable to the procurement
741 item if the procurement item is obtained outside of the state contract;
- 742 (C) the warranties applicable to the procurement item under the state contract with
743 the warranties applicable to the procurement item if the procurement item is
744 obtained outside of the state contract;
- 745 (D) the quality of the procurement item under the state contract with the quality of

- 746 the procurement item if the procurement item is obtained outside of the state
747 contract; and
- 748 (E) the ability of the vendor under the state contract to match the quoted cost of
749 the procurement item if the procurement item is obtained outside of the state
750 contract;
- 751 (ii) for a procurement item that, if defective in its manufacture, installation, or
752 performance, may result in serious physical injury, death, or substantial property
753 damage, determines in writing that the terms and conditions, relating to liability
754 for injury, death, or property damage, available from the source other than the
755 contractor who holds the state contract, are similar to, or better than, the terms and
756 conditions available under the state contract; and
- 757 (iii) grants an exception, in writing, to the requirement described in Subsection (4).
- 758 (6) Except as otherwise expressly provided in this section, a procurement unit:
- 759 (a) may not use the small purchase standard procurement process described in this
760 section for ongoing, continuous, and regularly scheduled procurements that exceed
761 the annual cumulative threshold; and
- 762 (b) shall make its ongoing, continuous, and regularly scheduled procurements that
763 exceed the annual cumulative threshold through a contract awarded through another
764 standard procurement process described in this chapter or an applicable exception to
765 another standard procurement process, described in Part 8, Exceptions to
766 Procurement Requirements.
- 767 (7) This section does not prohibit regularly scheduled payments for a procurement item
768 obtained under another provision of this chapter.
- 769 (8)(a) It is unlawful for a person knowingly to divide a single procurement into multiple
770 smaller procurements, including by dividing an invoice or purchase order into
771 multiple invoices or purchase orders, if:
- 772 (i) the single procurement would not have qualified as a small purchase under this
773 section;
- 774 (ii) one or more of the multiple smaller procurements qualify as a small purchase
775 under this section; and
- 776 (iii) the division is done with the intent to:
- 777 (A) avoid having to use a standard procurement process, other than the small
778 purchase process, that the person would otherwise be required to use for the
779 single procurement; or

780 (B) make one or more of the multiple smaller procurements fall below a small
 781 purchase expenditure threshold established by rule under Subsection (2)(b) that
 782 the single procurement would not have fallen below without the division.

783 (b) A violation of Subsection (8)(a) is subject to penalties as provided in Subsection
 784 63G-6a-2404.3(2).

785 (9) The Division of Finance within the Department of Government Operations may conduct
 786 an audit of an executive branch procurement unit to verify compliance with the
 787 requirements of this section.

788 (10) An executive branch procurement unit may not make a small purchase after January 1,
 789 2014, unless the chief procurement officer certifies that the person responsible for
 790 procurements in the procurement unit has satisfactorily completed training on this
 791 section and the rules made under this section.

792 Section 5. Section **63G-6a-805** is amended to read:

793 **63G-6a-805 . Purchase from community rehabilitation programs.**

794 (1) As used in this section:

795 (a) "Advisory board" means the Purchasing from Persons with Disabilities Advisory
 796 Board created under this section.

797 ~~[(b) "Central not-for-profit association" means a group of experts designated by the
 798 advisory board to do the following, under guidelines established by the advisory
 799 board:]~~

800 ~~[(i) assist the advisory board with its functions; and]~~

801 ~~[(ii) facilitate the implementation of advisory board policies.]~~

802 ~~[(c)]~~ (b)(i) "Community rehabilitation program" means a program that is operated
 803 primarily for the purpose of the employment and training of persons with a
 804 disability by a government agency or qualified nonprofit organization which is an
 805 income tax exempt organization under 26 U.S.C. Sec. 501(c)(3) of the Internal
 806 Revenue Code.

807 (ii) A community rehabilitation program:

808 (A) maintains an employment ratio of at least 75% of the program employees
 809 under the procurement contract in question have severe disabilities;

810 (B)(I) complies with any applicable occupational health and safety standards
 811 prescribed by the United States Department of Labor; or

812 (II) is a supported employment program approved by the Utah State Office of
 813 Rehabilitation created in Section 35A-1-202;

- 814 (C) has its principal place of business in Utah;
- 815 (D) produces ~~[any]~~ a good provided under this section in Utah; and
- 816 (E) provides ~~[any]~~ a service that is provided by individuals with a majority of
- 817 whom domiciled in Utah.
- 818 ~~[(d)]~~ (c) "Person with a disability" means a person with ~~[any]~~ a disability as defined by
- 819 and covered under the Americans with Disabilities Act of 1990, 42 U.S.C. 12102.
- 820 (2) There is created within the division the Purchasing from Persons with Disabilities
- 821 Advisory Board.
- 822 (3) The advisory board shall consist of three members, as follows:
- 823 (a) the director of the division or the director's designee;
- 824 (b) the director of the Utah State Office of Rehabilitation or the director's designee; and
- 825 (c) a representative of the private business community who shall be appointed to a
- 826 three-year term by the governor with the advice and consent of the Senate.
- 827 ~~(4)(a)~~ (a) The advisory board shall meet, as needed, to facilitate ~~[the procurement of goods~~
- 828 ~~and services from community rehabilitation programs by a procurement unit under~~
- 829 ~~this chapter by:]~~ a procurement unit's procurement of a good or service under this
- 830 chapter from a community rehabilitation program.
- 831 (b) The advisory board shall:
- 832 ~~[(a)]~~ (i) ~~[identifying goods and services that are available from community~~
- 833 ~~rehabilitation programs]~~ identify the good or service that is available from a
- 834 community rehabilitation program in accordance with the requirements of
- 835 Subsection (7);
- 836 ~~[(b)]~~ (ii) ~~[approving prices]~~ approve a price in accordance with Subsection (7)(c) for [
- 837 ~~goods and services that are identified under Subsection (4)(a)]~~ the good or service
- 838 that the advisory board identifies under Subsection (4)(b)(i);
- 839 ~~[(c)]~~ (iii) ~~[developing, maintaining, and approving a preferred procurement contract~~
- 840 ~~list of goods and services identified and priced under Subsections (4)(a) and (b)]~~
- 841 develop, maintain, and approve a preferred procurement contract list of the goods
- 842 and services that the advisory board identifies and prices under Subsections
- 843 (4)(b)(i) and (ii);
- 844 ~~[(d)]~~ (iv) ~~[reviewing bids received by a community rehabilitation program]~~ review a
- 845 community rehabilitation program's bid; and
- 846 ~~[(e)]~~ (v) ~~[awarding and renewing]~~ award and renew specified contracts for set contract
- 847 times, without competitive bidding, for ~~[the]~~ a procurement unit's purchase of [

- 848 ~~goods and services]~~ a good or service under Subsection (7).
- 849 (5) The provisions of Subsections (4) and (7)(a) are an exception to the procurement
850 provisions under this chapter.
- 851 (6)(a) The advisory board may ~~[designate a central not-for-profit association, appoint its~~
852 ~~members, and establish guidelines for its duties]~~ enter into an agreement with a person
853 to provide administrative support to the advisory board.
- 854 ~~[(b) The designated central not-for-profit association serves at the pleasure of the~~
855 ~~advisory board. The central not-for-profit association or its individual members may~~
856 ~~be removed by the advisory board at any time by a majority vote of the advisory~~
857 ~~board.]~~
- 858 ~~[(e)]~~ (b) Subject to the advisory board guidelines and discretion, ~~[a designated central~~
859 ~~not-for-profit association may be assigned to perform the following duties]~~ a person
860 described in Subsection (6)(a) shall:
- 861 (i) identify ~~[qualified]~~ a community rehabilitation ~~[programs]~~ program and the ~~[goods~~
862 ~~and services that they provide or have]~~ good or service that the community
863 rehabilitation program provides or has the potential to provide;
- 864 (ii) ~~[help ensure that goods and services are]~~ help ensure that a community
865 rehabilitation program's good or service is provided at reasonable quality and
866 delivery levels;
- 867 (iii) recommend pricing for ~~[goods and services]~~ a community rehabilitation
868 program's good or service;
- 869 (iv) under the advisory board's discretion:
- 870 (A) review ~~[bids and recommend the award of contracts under the advisory~~
871 ~~board's direction]~~ a community rehabilitation program's bid; and
- 872 (B) recommend to the advisory board that a procurement unit award a contract to
873 a community rehabilitation program;
- 874 (v) collect and report program data to the advisory board and ~~[to]~~ the division; and
- 875 (vi) ~~[other duties specified by the advisory board]~~ perform other duties that the
876 advisory board specifies.
- 877 (7) Except as provided under Subsection (9), notwithstanding any provision of this chapter
878 to the contrary, ~~[each]~~ a procurement unit shall purchase ~~[goods and services produced~~
879 ~~by a community rehabilitation program]~~ a community rehabilitation program's good or
880 service using the preferred procurement contract list approved under Subsection ~~[(4)(e)]~~
881 (4)(b)(iii) if:

- 882 (a) ~~[the good or service offered for sale by a community rehabilitation program]~~ the
 883 community rehabilitation program's good or service reasonably conforms to the
 884 needs and specifications of the procurement unit;
- 885 (b) the community rehabilitation program can supply the good or service within a
 886 reasonable time; and
- 887 (c) the price of the good or service is reasonably competitive with the cost of procuring
 888 the good or service from another source.
- 889 (8) ~~[Each]~~ A community rehabilitation program:
- 890 (a) may submit a bid to the advisory board at any time and not necessarily in response to
 891 an invitation for bids; and
- 892 (b) shall certify on ~~[any bid it]~~ the bid that the community rehabilitation program submits
 893 to the advisory board or to a procurement unit under this section that ~~[it]~~ the
 894 community rehabilitation program is claiming a preference under this section.
- 895 (9) During a fiscal year, the requirement for a procurement unit to purchase ~~[goods and~~
 896 ~~services produced by a community rehabilitation program]~~ a good or service that a
 897 community rehabilitation program produces under the preferred procurement list under
 898 Subsection (7) does not apply if the division determines that the total amount of
 899 procurement contracts with community rehabilitation programs has reached \$5 million
 900 for that fiscal year.
- 901 (10) In the case of conflict between a purchase under this section and a purchase under
 902 Section 63G-6a-804, this section prevails.
- 903 Section 6. Section **63G-6a-1201.5** is enacted to read:
- 904 **63G-6a-1201.5 . Award of contract -- Effect.**
- 905 An award of a contract under this chapter:
- 906 (1) is not an offer or an acceptance of a bid, proposal, estimate, quote, or an offer; and
 907 (2) does not create a contract.
- 908 Section 7. Section **63G-6a-1203** is amended to read:
- 909 **63G-6a-1203 . Provisions not to be included in a contract -- Exemption.**
- 910 (1) Except as provided under Subsection (2), a procurement unit may not enter into a
 911 contract under this chapter if a provision of the contract:
- 912 (a) requires the procurement unit to defend, indemnify, or hold harmless the vendor or
 913 another person;
- 914 (b) grants the vendor the unilateral authority to modify a term of the contract;
 915 (c) in the event of a dispute, litigation, or another adversarial proceeding, requires the

- 916 procurement unit to be represented by legal counsel other than:
- 917 (i) the attorney general;
- 918 (ii) other legal counsel the procurement unit chooses; or
- 919 (iii) if the vendor is obligated to the state under an indemnification provision of the
- 920 contract, other legal counsel the vendor chooses, subject to the written consent of
- 921 the procurement unit;
- 922 (d) requires the terms of the contract to be governed by, or construed in accordance, with
- 923 the laws of a state other than this state;
- 924 (e) requires a claim or dispute arising under the contract to be resolved or settled by
- 925 binding arbitration;
- 926 (f) is inconsistent with Chapter 2, Government Records Access and Management Act; or
- 927 (g) [A contract, including an amendment to an existing contract, entered into under this
- 928 chapter may not require that a design professional] requires a design professional to
- 929 indemnify another [from liability claims that arise] person from a liability claim
- 930 arising out of the design professional's services, unless the liability claim arises from:
- 931 (i) the design professional's negligent act, wrongful act, error[~~or omission~~], or
- 932 omission; or
- 933 (ii) [other] another liability imposed by law.
- 934 (2)(a) The assistant attorney general may exempt a contract from a prohibition under
- 935 Subsection (1)(a) through (g), as the relative positions of the contracting parties,
- 936 market conditions, or other circumstances justify.
- 937 (b) The assistant attorney general shall memorialize in writing to the contracting
- 938 procurement unit:
- 939 (i) any exemption granted under Subsection (2)(a); and
- 940 (ii) the basis for any exemption granted.
- 941 [~~(2)~~] (3) [~~Subsection (1) may not be waived by contract~~] Subject to Subsection (4), a
- 942 procurement unit may not enter into a contract with a vendor that waives a prohibition
- 943 described in Subsection (1).
- 944 [~~(3)~~] (4) Notwithstanding [~~Subsections (1) and (2)~~] Subsection (1)(g) or (3), a [design
- 945 professional may be required] procurement unit may require a design professional to
- 946 indemnify a person for whom the design professional has direct or indirect control or
- 947 responsibility.
- 948 **Section 8. Effective date.**
- 949 This bill takes effect on May 7, 2025.