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

Money Appropriated in this Bill:

None

Other Special Clauses:

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **11-13-226**, as enacted by Laws of Utah 2015, Chapter 265

32 **63G-6a-103**, as last amended by Laws of Utah 2023, Chapter 16

33 **63G-6a-107.6**, as last amended by Laws of Utah 2021, Chapter 179

34 **63G-6a-107.7**, as last amended by Laws of Utah 2023, Chapter 369

35 **63G-6a-1702**, as last amended by Laws of Utah 2017, Chapter 348

36 ENACTS:

37 **63G-6a-2501**, Utah Code Annotated 1953

38 **63G-6a-2502**, Utah Code Annotated 1953

39 **63G-6a-2503**, Utah Code Annotated 1953

40 **63G-6a-2504**, Utah Code Annotated 1953

41 **63G-6a-2505**, Utah Code Annotated 1953

42 **63G-6a-2506**, Utah Code Annotated 1953

43 **63G-6a-2507**, Utah Code Annotated 1953

44

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

46 Section 1. Section **11-13-226** is amended to read:

47 **11-13-226 . Competitive procurement -- Subject to state procurement code --**

48 **Exception.**

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

52 (2) Subject to Section 11-13-316, an interlocal entity is subject to and shall comply with
53 Title 63G, Chapter 6a, Utah Procurement Code, unless the board rules or policies
54 adopted under Subsection (1) include provisions to:

55 (a) establish a procurement officer of the interlocal entity and define the duties of the
56 procurement officer;

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

59 (c) address small purchases and establish small purchase thresholds and methods
60 applicable to small purchases;

61 (d) establish a procurement method that uses only objective criteria to award a contract

- 62 to the lowest responsible bidder that submits a responsive bid;
- 63 (e) establish a procurement method that allows subjective criteria to award a contract to
- 64 the vendor that submits the highest scoring proposal, including:
- 65 (i) a selection or evaluation committee of at least three individuals; and
- 66 (ii) documented independent scoring by the selection or evaluation committee to
- 67 determine best value;
- 68 (f) establish a method to allow for the cancellation of a solicitation;
- 69 (g) establish a method for creating a list of approved, qualified vendors;
- 70 (h) establish a method to request information before initiating a procurement process;
- 71 (i) allow the purchase of a procurement item under a state cooperative contract, as
- 72 defined in Section 63G-6a-103, or another government approved contract that results
- 73 from a competitive process;
- 74 (j) establish a procurement appeals process;
- 75 (k) establish documentation requirements applicable to procurements;
- 76 (l) establish notice requirements relating to the interlocal entity's issuance of a
- 77 solicitation;
- 78 (m) require that a procurement be awarded based on the criteria included in a solicitation;
- 79 (n) allow for a procurement from a single source under documented and properly
- 80 noticed conditions;
- 81 (o) allow for an emergency procurement under documented conditions;
- 82 (p) prohibit a cost-plus-percentage-of-cost contract and a cost-reimbursement contract,
- 83 with exceptions similar to exceptions under Subsections 63G-6a-1205(5) and (6);
- 84 (q) limit the length of a contract, allowing for documented exceptions;
- 85 (r) require that the total value of the contract over the entire contract period determines
- 86 the procurement threshold;
- 87 (s) prohibit dividing a procurement into multiple procurements to avoid an applicable
- 88 procurement threshold;
- 89 (t) prohibit the acceptance of bribes, gifts, or other favors from a vendor in exchange for
- 90 favorable treatment on a procurement;
- 91 (u) describe bond requirements for a construction contract; and
- 92 (v) establish standard terms and conditions for a contract with the interlocal entity.

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

94 **63G-6a-103 . Definitions.**

95 As used in this chapter:

- 96 (1) "Approved vendor" means a person who has been approved for inclusion on an
97 approved vendor list through the approved vendor list process.
- 98 (2) "Approved vendor list" means a list of approved vendors established under Section
99 63G-6a-507.
- 100 (3) "Approved vendor list process" means the procurement process described in Section
101 63G-6a-507.
- 102 (4) "Bidder" means a person who submits a bid or price quote in response to an invitation
103 for bids.
- 104 (5) "Bidding process" means the procurement process described in Part 6, Bidding.
- 105 (6) "Board" means the Utah State Procurement Policy Board, created in Section 63G-6a-202.
- 106 (7) "Change directive" means a written order signed by the procurement officer that directs
107 the contractor to suspend work or make changes, as authorized by contract, without the
108 consent of the contractor.
- 109 (8) "Change order" means a written alteration in specifications, delivery point, rate of
110 delivery, period of performance, price, quantity, or other provisions of a contract, upon
111 mutual agreement of the parties to the contract.
- 112 (9) "Chief procurement officer" means the individual appointed under Section 63A-2-102.
- 113 (10) "Conducting procurement unit" means a procurement unit that conducts all aspects of a
114 procurement:
- 115 (a) except:
- 116 (i) reviewing a solicitation to verify that it is in proper form; and
117 (ii) causing the publication of a notice of a solicitation; and
- 118 (b) including:
- 119 (i) preparing any solicitation document;
120 (ii) appointing an evaluation committee;
121 (iii) conducting the evaluation process, except the process relating to scores
122 calculated for costs of proposals;
123 (iv) selecting and recommending the person to be awarded a contract;
124 (v) negotiating the terms and conditions of a contract, subject to the issuing
125 procurement unit's approval; and
126 (vi) contract administration.
- 127 (11) "Conservation district" means the same as that term is defined in Section 17D-3-102.
- 128 (12) "Construction project":
- 129 (a) means a project for the construction, renovation, alteration, improvement, or repair of

- 130 a public facility on real property, including all services, labor, supplies, and materials
131 for the project; and
- 132 (b) does not include services and supplies for the routine, day-to-day operation, repair,
133 or maintenance of an existing public facility.
- 134 (13) "Construction manager/general contractor":
- 135 (a) means a contractor who enters into a contract:
- 136 (i) for the management of a construction project; and
137 (ii) that allows the contractor to subcontract for additional labor and materials that are
138 not included in the contractor's cost proposal submitted at the time of the
139 procurement of the contractor's services; and
- 140 (b) does not include a contractor whose only subcontract work not included in the
141 contractor's cost proposal submitted as part of the procurement of the contractor's
142 services is to meet subcontracted portions of change orders approved within the
143 scope of the project.
- 144 (14) "Construction subcontractor":
- 145 (a) means a person under contract with a contractor or another subcontractor to provide
146 services or labor for the design or construction of a construction project;
- 147 (b) includes a general contractor or specialty contractor licensed or exempt from
148 licensing under Title 58, Chapter 55, Utah Construction Trades Licensing Act; and
- 149 (c) does not include a supplier who provides only materials, equipment, or supplies to a
150 contractor or subcontractor for a construction project.
- 151 (15) "Contract" means an agreement for a procurement.
- 152 (16) "Contract administration" means all functions, duties, and responsibilities associated
153 with managing, overseeing, and carrying out a contract between a procurement unit and
154 a contractor, including:
- 155 (a) implementing the contract;
- 156 (b) ensuring compliance with the contract terms and conditions by the conducting
157 procurement unit and the contractor;
- 158 (c) executing change orders;
- 159 (d) processing contract amendments;
- 160 (e) resolving, to the extent practicable, contract disputes;
- 161 (f) curing contract errors and deficiencies;
- 162 (g) terminating a contract;
- 163 (h) measuring or evaluating completed work and contractor performance;

- 164 (i) computing payments under the contract; and
165 (j) closing out a contract.
- 166 (17) "Contractor" means a person who is awarded a contract with a procurement unit.
- 167 (18) "Cooperative procurement" means procurement conducted by, or on behalf of:
168 (a) more than one procurement unit; or
169 (b) a procurement unit and a cooperative purchasing organization.
- 170 (19) "Cooperative purchasing organization" means an organization, association, or alliance
171 of purchasers established to combine purchasing power in order to obtain the best value
172 for the purchasers by engaging in procurements in accordance with Section 63G-6a-2105.
- 173 (20) "Cost-plus-a-percentage-of-cost contract" means a contract under which the contractor
174 is paid a percentage of the total actual expenses or costs in addition to the contractor's
175 actual expenses or costs.
- 176 (21) "Cost-reimbursement contract" means a contract under which a contractor is
177 reimbursed for costs which are allowed and allocated in accordance with the contract
178 terms and the provisions of this chapter, and a fee, if any.
- 179 (22) "Days" means calendar days, unless expressly provided otherwise.
- 180 (23) "Definite quantity contract" means a fixed price contract that provides for a specified
181 amount of supplies over a specified period, with deliveries scheduled according to a
182 specified schedule.
- 183 (24) "Design professional" means:
184 (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects
185 Licensing Act;
186 (b) an individual licensed as a professional engineer or professional land surveyor under
187 Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors
188 Licensing Act; or
189 (c) an individual certified as a commercial interior designer under Title 58, Chapter 86,
190 State Certification of Commercial Interior Designers Act.
- 191 (25) "Design professional procurement process" means the procurement process described
192 in Part 15, Design Professional Services.
- 193 (26) "Design professional services" means:
194 (a) professional services within the scope of the practice of architecture as defined in
195 Section 58-3a-102;
196 (b) professional engineering as defined in Section 58-22-102;
197 (c) master planning and programming services; or

- 198 (d) services within the scope of the practice of commercial interior design, as defined in
199 Section 58-86-102.
- 200 (27) "Design-build" means the procurement of design professional services and
201 construction by the use of a single contract.
- 202 (28) "Division" means the Division of Purchasing and General Services, created in Section
203 63A-2-101.
- 204 (29) "Educational procurement unit" means:
- 205 (a) a school district;
- 206 (b) a public school, including a local school board or a charter school;
- 207 (c) the Utah Schools for the Deaf and the Blind;
- 208 (d) the Utah Education and Telehealth Network;
- 209 (e) an institution of higher education of the state described in Section 53B-1-102; or
- 210 (f) the State Board of Education.
- 211 (30) "Established catalogue price" means the price included in a catalogue, price list,
212 schedule, or other form that:
- 213 (a) is regularly maintained by a manufacturer or contractor;
- 214 (b) is published or otherwise available for inspection by customers; and
- 215 (c) states prices at which sales are currently or were last made to a significant number of
216 any category of buyers or buyers constituting the general buying public for the
217 supplies or services involved.
- 218 (31) (a) "Executive branch procurement unit" means a department, division, office,
219 bureau, agency, or other organization within the state executive branch.
- 220 (b) "Executive branch procurement unit" does not include the Colorado River Authority
221 of Utah as provided in Section 63M-14-210.
- 222 (32) "Facilities division" means the Division of Facilities Construction and Management,
223 created in Section 63A-5b-301.
- 224 (33) "Fixed price contract" means a contract that provides a price, for each procurement
225 item obtained under the contract, that is not subject to adjustment except to the extent
226 that:
- 227 (a) the contract provides, under circumstances specified in the contract, for an
228 adjustment in price that is not based on cost to the contractor; or
- 229 (b) an adjustment is required by law.
- 230 (34) "Fixed price contract with price adjustment" means a fixed price contract that provides
231 for an upward or downward revision of price, precisely described in the contract, that:

- 232 (a) is based on the consumer price index or another commercially acceptable index,
233 source, or formula; and
- 234 (b) is not based on a percentage of the cost to the contractor.
- 235 (35) "Grant" means an expenditure of public funds or other assistance, or an agreement to
236 expend public funds or other assistance, for a public purpose authorized by law, without
237 acquiring a procurement item in exchange.
- 238 (36) "Human services procurement item" means a procurement item used to provide
239 services or support to a child, youth, adult, or family.
- 240 [~~36~~] (37) "Immaterial error":
- 241 (a) means an irregularity or abnormality that is:
- 242 (i) a matter of form that does not affect substance; or
- 243 (ii) an inconsequential variation from a requirement of a solicitation that has no, little,
244 or a trivial effect on the procurement process and that is not prejudicial to other
245 vendors; and
- 246 (b) includes:
- 247 (i) a missing signature, missing acknowledgment of an addendum, or missing copy of
248 a professional license, bond, or insurance certificate;
- 249 (ii) a typographical error;
- 250 (iii) an error resulting from an inaccuracy or omission in the solicitation; and
- 251 (iv) any other error that the procurement official reasonably considers to be
252 immaterial.
- 253 [~~37~~] (38) "Indefinite quantity contract" means a fixed price contract that:
- 254 (a) is for an indefinite amount of procurement items to be supplied as ordered by a
255 procurement unit; and
- 256 (b) (i) does not require a minimum purchase amount; or
257 (ii) provides a maximum purchase limit.
- 258 [~~38~~] (39) "Independent procurement unit" means:
- 259 (a) (i) a legislative procurement unit;
- 260 (ii) a judicial branch procurement unit;
- 261 (iii) an educational procurement unit;
- 262 (iv) a local government procurement unit;
- 263 (v) a conservation district;
- 264 (vi) a local building authority;
- 265 (vii) a special district;

- 266 (viii) a public corporation;
- 267 (ix) a special service district; or
- 268 (x) the Utah Communications Authority, established in Section 63H-7a-201;
- 269 (b) the facilities division, but only to the extent of the procurement authority provided
- 270 under Title 63A, Chapter 5b, Administration of State Facilities;
- 271 (c) the attorney general, but only to the extent of the procurement authority provided
- 272 under Title 67, Chapter 5, Attorney General;
- 273 (d) the Department of Transportation, but only to the extent of the procurement authority
- 274 provided under Title 72, Transportation Code; ~~or~~
- 275 (e) the Department of Health and Human Services, but only for the procurement of a
- 276 human services procurement item; or
- 277 ~~(e)~~ (f) any other executive branch department, division, office, or entity that has
- 278 statutory procurement authority outside this chapter, but only to the extent of that
- 279 statutory procurement authority.
- 280 (40) (a) "Interlocal entity" means a separate political subdivision created under Title 11,
- 281 Chapter 13, Interlocal Cooperation Act.
- 282 (b) "Interlocal entity" does not include a project entity.
- 283 ~~(39)~~ (41) "Invitation for bids":
- 284 (a) means a document used to solicit:
- 285 (i) bids to provide a procurement item to a procurement unit; or
- 286 (ii) quotes for a price of a procurement item to be provided to a procurement unit; and
- 287 (b) includes all documents attached to or incorporated by reference in a document
- 288 described in Subsection ~~(39)(a)~~ (41)(a).
- 289 ~~(40)~~ (42) "Issuing procurement unit" means a procurement unit that:
- 290 (a) reviews a solicitation to verify that it is in proper form;
- 291 (b) causes the notice of a solicitation to be published; and
- 292 (c) negotiates and approves the terms and conditions of a contract.
- 293 ~~(41)~~ (43) "Judicial procurement unit" means:
- 294 (a) the Utah Supreme Court;
- 295 (b) the Utah Court of Appeals;
- 296 (c) the Judicial Council;
- 297 (d) a state judicial district; or
- 298 (e) an office, committee, subcommittee, or other organization within the state judicial
- 299 branch.

- 300 [~~(42)~~] (44) "Labor hour contract" is a contract under which:
- 301 (a) the supplies and materials are not provided by, or through, the contractor; and
- 302 (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and profit
- 303 for a specified number of labor hours or days.
- 304 [~~(43)~~] (45) "Legislative procurement unit" means:
- 305 (a) the Legislature;
- 306 (b) the Senate;
- 307 (c) the House of Representatives;
- 308 (d) a staff office of the Legislature, the Senate, or the House of Representatives; or
- 309 (e) a committee, subcommittee, commission, or other organization:
- 310 (i) within the state legislative branch; or
- 311 (ii) (A) that is created by statute to advise or make recommendations to the
- 312 Legislature;
- 313 (B) the membership of which includes legislators; and
- 314 (C) for which the Office of Legislative Research and General Counsel provides
- 315 staff support.
- 316 [~~(44)~~] (46) "Local building authority" means the same as that term is defined in Section
- 317 17D-2-102.
- 318 [~~(45)~~] (47) "Local government procurement unit" means:
- 319 (a) a county, municipality, [~~or~~] interlocal entity, or project entity, and each office of the
- 320 county, municipality, interlocal entity, or project entity, unless:
- 321 (i) the county or municipality adopts a procurement code by ordinance; [~~or~~]
- 322 (ii) the interlocal entity adopts procurement rules or policies as provided in
- 323 Subsection 11-13-226(2); or
- 324 [~~(ii)~~] (iii) the project entity adopts a procurement code through the process described
- 325 in Section 11-13-316;
- 326 (b) (i) a county or municipality that has adopted this entire chapter by ordinance, and
- 327 each office or agency of that county or municipality; and
- 328 (ii) a project entity that has adopted this entire chapter through the process described
- 329 in Subsection 11-13-316; or
- 330 (c) a county, municipality, or project entity, and each office of the county, municipality,
- 331 or project entity that has adopted a portion of this chapter to the extent that:
- 332 (i) a term in the ordinance is used in the adopted chapter; or
- 333 (ii) a term in the ordinance is used in the language a project entity adopts in its

- 334 procurement code through the process described in Section 11-13-316.
- 335 ~~[(46)]~~ (48) "Multiple award contracts" means the award of a contract for an indefinite
336 quantity of a procurement item to more than one person.
- 337 ~~[(47)]~~ (49) "Multiyear contract" means a contract that extends beyond a one-year period,
338 including a contract that permits renewal of the contract, without competition, beyond
339 the first year of the contract.
- 340 ~~[(48)]~~ (50) "Municipality" means a city, town, or metro township.
- 341 ~~[(49)]~~ (51) "Nonadopting local government procurement unit" means:
- 342 (a) a county or municipality that has not adopted Part 16, Protests, Part 17, Procurement
343 Appeals Board, Part 18, Appeals to Court and Court Proceedings, and Part 19,
344 General Provisions Related to Protest or Appeal; and
- 345 (b) each office or agency of a county or municipality described in Subsection ~~[(49)(a)]~~
346 (51)(a).
- 347 ~~[(50)]~~ (52) "Offeror" means a person who submits a proposal in response to a request for
348 proposals.
- 349 ~~[(51)]~~ (53) "Preferred bidder" means a bidder that is entitled to receive a reciprocal
350 preference under the requirements of this chapter.
- 351 ~~[(52)]~~ (54) "Procure" means to acquire a procurement item through a procurement.
- 352 ~~[(53)]~~ (55) "Procurement" means the acquisition of a procurement item through an
353 expenditure of public funds, or an agreement to expend public funds, including an
354 acquisition through a public-private partnership.
- 355 ~~[(54)]~~ (56) "Procurement item" means an item of personal property, a technology, a service,
356 or a construction project.
- 357 ~~[(55)]~~ (57) "Procurement official" means:
- 358 (a) for a procurement unit other than an independent procurement unit, the chief
359 procurement officer;
- 360 (b) for a legislative procurement unit, the individual, individuals, or body designated in a
361 policy adopted by the Legislative Management Committee;
- 362 (c) for a judicial procurement unit, the Judicial Council or an individual or body
363 designated by the Judicial Council by rule;
- 364 (d) for a local government procurement unit:
- 365 (i) the legislative body of the local government procurement unit; or
366 (ii) an individual or body designated by the local government procurement unit;
- 367 (e) for a special district, the board of trustees of the special district or the board of

- 368 trustees' designee;
- 369 (f) for a special service district, the governing body of the special service district or the
370 governing body's designee;
- 371 (g) for a local building authority, the board of directors of the local building authority or
372 the board of directors' designee;
- 373 (h) for a conservation district, the board of supervisors of the conservation district or the
374 board of supervisors' designee;
- 375 (i) for a public corporation, the board of directors of the public corporation or the board
376 of directors' designee;
- 377 (j) for a school district or any school or entity within a school district, the board of the
378 school district or the board's designee;
- 379 (k) for a charter school, the individual or body with executive authority over the charter
380 school or the designee of the individual or body;
- 381 (l) for an institution of higher education described in Section 53B-2-101, the president of
382 the institution of higher education or the president's designee;
- 383 (m) for the State Board of Education, the State Board of Education or the State Board of
384 Education's designee;
- 385 (n) for the Utah Board of Higher Education, the Commissioner of Higher Education or
386 the designee of the Commissioner of Higher Education;
- 387 (o) for the Utah Communications Authority, established in Section 63H-7a-201, the
388 executive director of the Utah Communications Authority or the executive director's
389 designee; or
- 390 (p) (i) for the facilities division, and only to the extent of procurement activities of
391 the facilities division as an independent procurement unit under the procurement
392 authority provided under Title 63A, Chapter 5b, Administration of State Facilities,
393 the director of the facilities division or the director's designee;
- 394 (ii) for the attorney general, and only to the extent of procurement activities of the
395 attorney general as an independent procurement unit under the procurement
396 authority provided under Title 67, Chapter 5, Attorney General, the attorney
397 general or the attorney general's designee;
- 398 (iii) for the Department of Transportation created in Section 72-1-201, and only to
399 the extent of procurement activities of the Department of Transportation as an
400 independent procurement unit under the procurement authority provided under
401 Title 72, Transportation Code, the executive director of the Department of

402 Transportation or the executive director's designee; ~~[or]~~
 403 (iv) for the Department of Health and Human Services, and only to the extent of the
 404 procurement activities of the Department of Health and Human Services as an
 405 independent procurement unit, the executive director of the Department of Health
 406 and Human Services or the executive director's designee; or
 407 ~~[(iv)]~~ (v) for any other executive branch department, division, office, or entity that has
 408 statutory procurement authority outside this chapter, and only to the extent of the
 409 procurement activities of the department, division, office, or entity as an
 410 independent procurement unit under the procurement authority provided outside
 411 this chapter for the department, division, office, or entity, the chief executive
 412 officer of the department, division, office, or entity or the chief executive officer's
 413 designee.

414 ~~[(56)]~~ (58) "Procurement unit"[:]

415 ~~[(a)]~~ means:

- 416 ~~[(i)]~~ (a) a legislative procurement unit;
- 417 ~~[(ii)]~~ (b) an executive branch procurement unit;
- 418 ~~[(iii)]~~ (c) a judicial procurement unit;
- 419 ~~[(iv)]~~ (d) an educational procurement unit;
- 420 ~~[(v)]~~ (e) the Utah Communications Authority, established in Section 63H-7a-201;
- 421 ~~[(vi)]~~ (f) a local government procurement unit;
- 422 ~~[(vii)]~~ (g) a special district;
- 423 ~~[(viii)]~~ (h) a special service district;
- 424 ~~[(ix)]~~ (i) a local building authority;
- 425 ~~[(x)]~~ (j) a conservation district; ~~[and]~~ or
- 426 ~~[(xi)]~~ (k) a public corporation~~[:and]~~ .

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

430 ~~[(57)]~~ (59) "Professional service" means labor, effort, or work that requires specialized
 431 knowledge, expertise, and discretion, including labor, effort, or work in the field of:

- 432 (a) accounting;
- 433 (b) administrative law judge service;
- 434 (c) architecture;
- 435 (d) construction design and management;

- 436 (e) engineering;
- 437 (f) financial services;
- 438 (g) information technology;
- 439 (h) the law;
- 440 (i) medicine;
- 441 (j) psychiatry; or
- 442 (k) underwriting.
- 443 (60) "Project entity" means the same as that term is defined in Section 11-13-103.
- 444 [~~(58)~~] (61) "Protest officer" means:
- 445 (a) for the division or an independent procurement unit:
- 446 (i) the procurement official;
- 447 (ii) the procurement official's designee who is an employee of the procurement unit;
- 448 or
- 449 (iii) a person designated by rule made by the rulemaking authority; or
- 450 (b) for a procurement unit other than an independent procurement unit, the chief
- 451 procurement officer or the chief procurement officer's designee who is an employee
- 452 of the division .
- 453 [~~(59)~~] (62) "Public corporation" means the same as that term is defined in Section 63E-1-102.
- 454 [~~(60) "Project entity" means the same as that term is defined in Section 11-13-103.]~~
- 455 [~~(61)~~] (63) "Public entity" means the state or any other government entity within the state
- 456 that expends public funds.
- 457 [~~(62)~~] (64) "Public facility" means a building, structure, infrastructure, improvement, or
- 458 other facility of a public entity.
- 459 [~~(63)~~] (65) "Public funds" means money, regardless of its source, including from the federal
- 460 government, that is owned or held by a procurement unit.
- 461 [~~(64)~~] (66) "Public transit district" means a public transit district organized under Title 17B,
- 462 Chapter 2a, Part 8, Public Transit District Act.
- 463 [~~(65)~~] (67) "Public-private partnership" means an arrangement or agreement, occurring on
- 464 or after January 1, 2017, between a procurement unit and one or more contractors to
- 465 provide for a public need through the development or operation of a project in which the
- 466 contractor or contractors share with the procurement unit the responsibility or risk of
- 467 developing, owning, maintaining, financing, or operating the project.
- 468 [~~(66)~~] (68) "Qualified vendor" means a vendor who:
- 469 (a) is responsible; and

- 470 (b) submits a responsive statement of qualifications under Section 63G-6a-410 that
471 meets the minimum mandatory requirements, evaluation criteria, and any applicable
472 score thresholds set forth in the request for statement of qualifications.
- 473 ~~[(67)]~~ (69) "Real property" means land and any building, fixture, improvement,
474 appurtenance, structure, or other development that is permanently affixed to land.
- 475 ~~[(68)]~~ (70) "Request for information" means a nonbinding process through which a
476 procurement unit requests information relating to a procurement item.
- 477 ~~[(69)]~~ (71) "Request for proposals" means a document used to solicit proposals to provide a
478 procurement item to a procurement unit, including all other documents that are attached
479 to that document or incorporated in that document by reference.
- 480 ~~[(70)]~~ (72) "Request for proposals process" means the procurement process described in Part
481 7, Request for Proposals.
- 482 ~~[(71)]~~ (73) "Request for statement of qualifications" means a document used to solicit
483 information about the qualifications of a person interested in responding to a potential
484 procurement, including all other documents attached to that document or incorporated in
485 that document by reference.
- 486 ~~[(72)]~~ (74) "Requirements contract" means a contract:
- 487 (a) under which a contractor agrees to provide a procurement unit's entire requirements
488 for certain procurement items at prices specified in the contract during the contract
489 period; and
- 490 (b) that:
- 491 (i) does not require a minimum purchase amount; or
492 (ii) provides a maximum purchase limit.
- 493 ~~[(73)]~~ (75) "Responsible" means being capable, in all respects, of:
- 494 (a) meeting all the requirements of a solicitation; and
495 (b) fully performing all the requirements of the contract resulting from the solicitation,
496 including being financially solvent with sufficient financial resources to perform the
497 contract.
- 498 ~~[(74)]~~ (76) "Responsive" means conforming in all material respects to the requirements of a
499 solicitation.
- 500 ~~[(75)]~~ (77) "Rule" includes a policy or regulation adopted by the rulemaking authority, if
501 adopting a policy or regulation is the method the rulemaking authority uses to adopt
502 provisions that govern the applicable procurement unit.
- 503 ~~[(76)]~~ (78) "Rulemaking authority" means:

- 504 (a) for a legislative procurement unit, the Legislative Management Committee;
- 505 (b) for a judicial procurement unit, the Judicial Council;
- 506 (c) (i) only to the extent of the procurement authority expressly granted to the
- 507 procurement unit by statute:
- 508 (A) for the facilities division, the facilities division;
- 509 (B) for the Office of the Attorney General, the attorney general;
- 510 (C) for the Department of Transportation created in Section 72-1-201, the
- 511 executive director of the Department of Transportation; [~~and~~]
- 512 (D) for the Department of Health and Human Services, the executive director of
- 513 the Department of Health and Human Services; and
- 514 [~~(D)~~] (E) for any other executive branch department, division, office, or entity that
- 515 has statutory procurement authority outside this chapter, the governing
- 516 authority of the department, division, office, or entity; and
- 517 (ii) for each other executive branch procurement unit, the board;
- 518 (d) for a local government procurement unit:
- 519 (i) the governing body of the local government unit; or
- 520 (ii) an individual or body designated by the local government procurement unit;
- 521 (e) for a school district or a public school, the board, except to the extent of a school
- 522 district's own nonadministrative rules that do not conflict with the provisions of this
- 523 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 district,
- 529 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, the

- 538 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 a
- 547 collective bargaining agreement.
- 548 [~~(78)~~] (80) "Small purchase process" means the procurement process described in Section
- 549 63G-6a-506.
- 550 [~~(79)~~] (81) "Sole source contract" means a contract resulting from a sole source procurement.
- 551 [~~(80)~~] (82) "Sole source procurement" means a procurement without competition pursuant to
- 552 a determination under Subsection 63G-6a-802(1)(a) that there is only one source for the
- 553 procurement item.
- 554 [~~(81)~~] (83) "Solicitation" means an invitation for bids, request for proposals, or request for
- 555 statement of qualifications.
- 556 [~~(82)~~] (84) "Solicitation response" means:
- 557 (a) a bid submitted in response to an invitation for bids;
- 558 (b) a proposal submitted in response to a request for proposals; or
- 559 (c) a statement of qualifications submitted in response to a request for statement of
- 560 qualifications.
- 561 [~~(83)~~] (85) "Special district" means the same as that term is defined in Section 17B-1-102.
- 562 [~~(84)~~] (86) "Special service district" means the same as that term is defined in Section
- 563 17D-1-102.
- 564 [~~(85)~~] (87) "Specification" means any description of the physical or functional
- 565 characteristics or of the nature of a procurement item included in an invitation for bids
- 566 or a request for proposals, or otherwise specified or agreed to by a procurement unit,
- 567 including a description of:
- 568 (a) a requirement for inspecting or testing a procurement item; or
- 569 (b) preparing a procurement item for delivery.
- 570 [~~(86)~~] (88) "Standard procurement process" means:
- 571 (a) the bidding process;

- 572 (b) the request for proposals process;
- 573 (c) the approved vendor list process;
- 574 (d) the small purchase process; or
- 575 (e) the design professional procurement process.
- 576 ~~[(87)]~~ (89) "State cooperative contract" means a contract awarded by the division for and in
577 behalf of all public entities.
- 578 ~~[(88)]~~ (90) "Statement of qualifications" means a written statement submitted to a
579 procurement unit in response to a request for statement of qualifications.
- 580 ~~[(89)]~~ (91) "Subcontractor":
- 581 (a) means a person under contract to perform part of a contractual obligation under the
582 control of the contractor, whether the person's contract is with the contractor directly
583 or with another person who is under contract to perform part of a contractual
584 obligation under the control of the contractor; and
- 585 (b) includes a supplier, distributor, or other vendor that furnishes supplies or services to
586 a contractor.
- 587 ~~[(90)]~~ (92) "Technology" means the same as "information technology," as defined in Section
588 63A-16-102.
- 589 ~~[(91)]~~ (93) "Tie bid" means that the lowest responsive bids of responsible bidders are
590 identical in price.
- 591 ~~[(92)]~~ (94) "Time and materials contract" means a contract under which the contractor is
592 paid:
- 593 (a) the actual cost of direct labor at specified hourly rates;
- 594 (b) the actual cost of materials and equipment usage; and
- 595 (c) an additional amount, expressly described in the contract, to cover overhead and
596 profit, that is not based on a percentage of the cost to the contractor.
- 597 ~~[(93)]~~ (95) "Transitional costs":
- 598 (a) means the costs of changing:
- 599 (i) from an existing provider of a procurement item to another provider of that
600 procurement item; or
- 601 (ii) from an existing type of procurement item to another type;
- 602 (b) includes:
- 603 (i) training costs;
- 604 (ii) conversion costs;
- 605 (iii) compatibility costs;

- 606 (iv) costs associated with system downtime;
- 607 (v) disruption of service costs;
- 608 (vi) staff time necessary to implement the change;
- 609 (vii) installation costs; and
- 610 (viii) ancillary software, hardware, equipment, or construction costs; and
- 611 (c) does not include:
- 612 (i) the costs of preparing for or engaging in a procurement process; or
- 613 (ii) contract negotiation or drafting costs.
- 614 [~~(94)~~] (96) "Vendor":
- 615 (a) means a person who is seeking to enter into a contract with a procurement unit to
- 616 provide a procurement item; and
- 617 (b) includes:
- 618 (i) a bidder;
- 619 (ii) an offeror;
- 620 (iii) an approved vendor;
- 621 (iv) a design professional; and
- 622 (v) a person who submits an unsolicited proposal under Section 63G-6a-712.
- 623 Section 3. Section **63G-6a-107.6** is amended to read:
- 624 **63G-6a-107.6 . Exemptions from chapter.**
- 625 (1) Except for this Subsection (1), the provisions of this chapter do not apply to:
- 626 (a) a public entity's acquisition of a procurement item from another public entity; or
- 627 (b) a public entity that is not a procurement unit, including the Colorado River Authority
- 628 of Utah as provided in Section 63M-14-210.
- 629 (2) Unless otherwise provided by statute and except for this Subsection (2), the provisions
- 630 of this chapter do not apply to the acquisition or disposal of real property or an interest
- 631 in real property.
- 632 (3) Except for this Subsection (3) and Part 24, Unlawful Conduct and Penalties, the
- 633 provisions of this chapter do not apply to:
- 634 (a) funds administered under the Percent-for-Art Program of the Utah Percent-for-Art
- 635 Act;
- 636 (b) a grant;
- 637 (c) medical supplies or medical equipment, including service agreements for medical
- 638 equipment, obtained by the University of Utah Hospital or the Department of Health
- 639 and Human Services through a purchasing consortium if:

- 640 (i) the consortium uses a competitive procurement process; and
- 641 (ii) the chief administrative officer of the hospital or the executive director of the
- 642 Department of Health and Human Services, as the case may be, makes a written
- 643 finding that the prices for purchasing medical supplies and medical equipment
- 644 through the consortium are competitive with market prices;
- 645 (d) the purchase of firefighting supplies or equipment by the Division of Forestry, Fire,
- 646 and State Lands, created in Section 65A-1-4, through the federal General Services
- 647 Administration or the National Fire Cache system;
- 648 (e) supplies purchased for resale to the public; or
- 649 (f) activities related to the management of investments by a public entity granted
- 650 investment authority by law.
- 651 (4) This chapter does not supersede the requirements for retention or withholding of
- 652 construction proceeds and release of construction proceeds as provided in Section 13-8-5.
- 653 (5) Except for this Subsection (5), the provisions of this chapter do not apply to a
- 654 procurement unit's hiring a mediator, arbitrator, or arbitration panel member to
- 655 participate in the procurement unit's dispute resolution efforts.
- 656 Section 4. Section **63G-6a-107.7** is amended to read:
- 657 **63G-6a-107.7 . Procurement rules.**
- 658 (1) (a) Subject to Subsection (1)(b), the rulemaking authority for a procurement unit
- 659 shall make rules relating to the management and control of procurements and
- 660 procurement procedures by the procurement unit.
- 661 (b) Facilities division rules governing procurement of construction projects, design
- 662 professional services, and leases apply to the procurement of construction projects,
- 663 design professional services, and leases of real property, respectively, by the facilities
- 664 division.
- 665 (2) A rulemaking authority may not adopt rules, policies, or regulations that are inconsistent
- 666 with this chapter.
- 667 (3) An individual or body that makes rules as required or authorized in this chapter shall
- 668 make the rules:
- 669 (a) in accordance with Chapter 3, Utah Administrative Rulemaking Act, if the individual
- 670 or body is subject to Chapter 3, Utah Administrative Rulemaking Act; or
- 671 (b) in accordance with the established process for making rules or their equivalent, if the
- 672 individual or body is not subject to Chapter 3, Utah Administrative Rulemaking Act.
- 673 (4) The rules of the rulemaking authority for the executive branch procurement unit shall

674 require, for each contract and request for proposals, the inclusion of a clause that
 675 requires the issuing procurement unit, for the duration of the contract, to make available
 676 contact information of the winning contractor to the Department of Workforce Services
 677 in accordance with Section 35A-2-203. This requirement does not preclude a contractor
 678 from advertising job openings in other forums throughout the state.

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

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

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

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

686 **63G-6a-1702 . Appeal to Utah State Procurement Policy Board -- Appointment**
 687 **of procurement appeals panel -- Proceedings.**

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

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

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

697 (i) the day on which the written decision described in Section 63G-6a-1603 is:

- 698 (A) personally served on the party or the party's representative; or
- 699 (B) emailed or mailed to the address or email address provided by the party under
 700 Subsection 63G-6a-1602(4); or

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

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

- 704 (i) include the address of record and email address of record of the party filing the
 705 notice of appeal; and
- 706 (ii) be accompanied by a copy of any written protest decision.

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

- 708 (3) A person may not base an appeal of a protest under this section on:
- 709 (a) a ground not specified in the person's protest under Section 63G-6a-1602; or
- 710 (b) new or additional evidence not considered by the protest officer.
- 711 (4) (a) A person may not appeal from a protest described in Section 63G-6a-1602, unless:
- 712 (i) a decision on the protest has been issued; or
- 713 (ii) a decision is not issued and the 30-day period described in Subsection
- 714 63G-6a-1603(9), or a longer period agreed to by the parties, has passed.
- 715 (b) A procurement unit may not appeal a protest decision or other determination made
- 716 by the procurement unit's protest officer.
- 717 (5) (a) Within seven days after the chair of the board receives a written notice of an
- 718 appeal under this section, the chair shall submit a written request to the protest officer
- 719 for the protest appeal record.
- 720 (b) Within seven days after the chair receives the protest appeal record from the protest
- 721 officer, the appointing officer shall, in consultation with the attorney general's office:
- 722 (i) review the appeal to determine whether the appeal complies with the requirements
- 723 of Subsections (2), (3), and (4) and Section 63G-6a-1703; and
- 724 (ii) (A) dismiss any claim asserted in the appeal, or dismiss the appeal, without
- 725 holding a hearing if the appointing officer determines that the claim or appeal,
- 726 respectively, fails to comply with any of the requirements listed in Subsection
- 727 (5)(b)(i); or
- 728 (B) appoint a procurement appeals panel to conduct an administrative review of
- 729 any claim in the appeal that has not been dismissed under Subsection
- 730 (5)(b)(ii)(A), if the appointing officer determines that one or more claims
- 731 asserted in the appeal comply with the requirements listed in Subsection
- 732 (5)(b)(i).
- 733 (c) A procurement appeals panel appointed under Subsection (5)~~(a)~~ (b)(ii) shall consist
- 734 of an 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 appeals
- 739 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,
745 contract award, 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 appointed,
747 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
751 on which the procurement appeals panel is appointed, or before a later date that all
752 parties agree 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
755 appeals panel considers a hearing to be necessary; and
- 756 (B) if the procurement appeals panel conducts an informal hearing, shall, at least
757 seven days before the hearing, mail, email, or hand-deliver a written notice of
758 the hearing to the 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
761 procurement appeals panel to understand the basis of the appeal and information
762 contained in the protest appeal record, but may not otherwise take any additional
763 evidence or consider any additional 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
781 meeting for its deliberations.
- 782 (11) A procurement appeals panel may continue an administrative review under this section
783 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, including
795 rules that provide for:
- 796 (a) expedited proceedings; and
- 797 (b) electronic participation in the proceedings by panel members and participants.
- 798 (14) The Utah Rules of Evidence do not apply to a hearing held by a procurement 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
812 procurement item, including recommendations regarding persons to be debarred or
813 suspended under Section 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 contract
818 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
823 department 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
828 outweigh the 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 from
833 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 enter
844 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 procurement
850 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;
855 or
- 856 (B) if the invitation is an open-ended invitation, a statement that there is no set
857 closing date for the invitation;
- 858 (iii) the requirements the department has established for the submission of an
859 application;
- 860 (iv) the payment rate or a description of the process for determining the payment rate
861 for the human services procurement item;
- 862 (v) the qualifications a provider is required to meet to be awarded a contract for the
863 human services procurement item; and
- 864 (vi) the required terms and conditions of a contract if awarded.
- 865 (b) The department shall publish the invitation in accordance with the notice
866 requirements for a solicitation described in Section 63G-6a-2506.
- 867 (c) The department may:
- 868 (i) provide for an indeterminate or specified time period for a provider to respond to
869 the invitation;
- 870 (ii) close an invitation if the need for additional providers for a human services
871 procurement item no longer exists; or
- 872 (iii) reissue an invitation after closing the invitation.
- 873 (d) The department may provide technical application assistance to a person applying in
874 response to an invitation.
- 875 (4) (a) Upon receipt of an application submitted in response to an invitation, the
876 department shall:

- 877 (i) review the application to determine:
878 (A) the application's compliance with the requirements referred to in Subsection
879 (3)(a)(iii); and
880 (B) whether the person that submitted the application meets the qualifications
881 referred to in Subsection (3)(a)(v);
882 (ii) award a contract to a person:
883 (A) whose application complies with the requirements referred to in Subsection
884 (3)(a)(iii); and
885 (B) that meets the qualifications referred to in Subsection (3)(a)(v); and
886 (iii) reject an application if:
887 (A) the application does not comply with the requirements referred to in
888 Subsection (3)(a)(iii); or
889 (B) the person that submitted the application does not meet the qualifications
890 referred to in Subsection (3)(a)(v).
891 (b) If the department closes an invitation, the department may reject an application
892 submitted before the invitation is closed.
893 (c) The department may allow a person to correct deficiencies in an application during
894 the department's review of the application under Subsection (4)(a).
895 (5) If a person's application is rejected under Subsection (4):
896 (a) the department shall notify the person of the rejection in writing; and
897 (b) the person may not reapply to the same invitation for at least 12 months after the day
898 on which the rejection is issued.
899 (6) (a) The department may award a perpetual contract under this section if the contract
900 is awarded pursuant to an open-ended invitation.
901 (b) Subsection (6)(a) does not prevent the department from terminating a perpetual
902 contract, under terms established in the contract, if the open-ended invitation
903 terminates.
904 (7) The department may make rules to establish procedures to ensure the open enrollment
905 invitation process described in this section is administered in an open and fair manner
906 that provides any interested, qualified provider the ability to be awarded a contract.
907 Section 10. Section **63G-6a-2505** is enacted to read:
908 **63G-6a-2505 . Debarment or suspension from consideration for award of**
909 **contracts.**
910 (1) The executive director may:

- 911 (a) debar or suspend a person from consideration for an award of a contract for a human
 912 services procurement item for any amount of time in accordance with the process
 913 described in Subsection 63G-6a-904(1); and
- 914 (b) obtain the recommendation of the council before debarring or suspending the person.
- 915 (2) The council shall recommend that the executive director debar or suspend a person for
 916 an award of a contract for a human services procurement item if the person:
- 917 (a) is convicted of a criminal offense:
- 918 (i) for actions taken to obtain or perform under a public or private contract;
 919 (ii) for embezzlement, fraud, theft, forgery, bribery, falsification or destruction of
 920 records, or receiving stolen property; or
- 921 (iii) under Title 76, Chapter 10, Part 31, Utah Antitrust Act, or another antitrust law;
- 922 (b) fails, without good cause, to perform in accordance with the terms of a contract with
 923 the department;
- 924 (c) commits two or more violations of department rules made in accordance with Title
 925 63G, Chapter 3, Utah Administrative Rulemaking Act;
- 926 (d) violates this chapter;
- 927 (e) poses a significant risk of harm to department clients or the department;
- 928 (f) is barred or suspended from providing services to another governmental agency; or
 929 (g) takes another action that the council determines is fraudulent or substantially affects
 930 the person's ability to perform under a contract with the department for a human
 931 services procurement item.

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

933 **63G-6a-2506 . Public notice requirements.**

- 934 (1) The department may post notice of a solicitation in accordance with Subsection
 935 63G-6a-112(1) at least three days before the day of the deadline for submission of a
 936 solicitation response.
- 937 (2) The department may reduce the three-day period described in Subsection (1) in
 938 accordance with Subsection 63G-6a-112(2).

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

940 **63G-6a-2507 . Human services procurement appeals process.**

- 941 (1) A protester may appeal a protest decision to the department in the same manner a
 942 protest may be appealed to the board under Part 17, Procurement Appeals Board.
- 943 (2) In conducting an appeal under Subsection (1), the executive director has the same
 944 powers and authority as the chair of the board and the appointing officer in an appeal

945 conducted under Part 17, Procurement Appeals Board, including the power to appoint a
946 procurement appeals panel to conduct a review of a claim in the appeal.

947 Section 13. **Effective date.**

948 This bill takes effect on May 1, 2024.