

PUBLIC-PRIVATE PARTNERSHIP AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies and enacts provisions relating to public-private partnerships.

Highlighted Provisions:

This bill:

► provides a process for a person to submit to a procurement unit an unsolicited proposal for a public-private partnership, including:

- requirements for an unsolicited proposal;
- a process for considering and evaluating unsolicited proposals; and
- limitations on a procurement unit's awarding a contract pursuant to an

unsolicited proposal; and

► makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-2-305, as last amended by Laws of Utah 2017, Chapters 374, 382, and 415

63G-6a-103, as last amended by Laws of Utah 2017, Chapters 181, 348, 376, 382, 463

and last amended by Coordination Clause, Laws of Utah 2017, Chapter 382



28 ENACTS:

29 **63G-6a-712**, Utah Code Annotated 1953



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

32 Section 1. Section **63G-2-305** is amended to read:

33 **63G-2-305. Protected records.**

34 The following records are protected if properly classified by a governmental entity:

35 (1) trade secrets as defined in Section **13-24-2** if the person submitting the trade secret
36 has provided the governmental entity with the information specified in Section **63G-2-309**;

37 (2) commercial information or nonindividual financial information obtained from a
38 person if:

39 (a) disclosure of the information could reasonably be expected to result in unfair
40 competitive injury to the person submitting the information or would impair the ability of the
41 governmental entity to obtain necessary information in the future;

42 (b) the person submitting the information has a greater interest in prohibiting access
43 than the public in obtaining access; and

44 (c) the person submitting the information has provided the governmental entity with
45 the information specified in Section **63G-2-309**;

46 (3) commercial or financial information acquired or prepared by a governmental entity
47 to the extent that disclosure would lead to financial speculations in currencies, securities, or
48 commodities that will interfere with a planned transaction by the governmental entity or cause
49 substantial financial injury to the governmental entity or state economy;

50 (4) records, the disclosure of which could cause commercial injury to, or confer a
51 competitive advantage upon a potential or actual competitor of, a commercial project entity as
52 defined in Subsection **11-13-103(4)**;

53 (5) test questions and answers to be used in future license, certification, registration,
54 employment, or academic examinations;

55 (6) records, the disclosure of which would impair governmental procurement
56 proceedings or give an unfair advantage to any person proposing to enter into a contract or
57 agreement with a governmental entity, except, subject to Subsections (1) and (2), that this
58 Subsection (6) does not restrict the right of a person to have access to, after the contract or

59 grant has been awarded and signed by all parties[-];

60 (a) a bid, proposal, application, or other information submitted to or by a governmental
61 entity in response to:

62 [~~(a)~~] (i) an invitation for bids;

63 [~~(b)~~] (ii) a request for proposals;

64 [~~(c)~~] (iii) a request for quotes;

65 [~~(d)~~] (iv) a grant; or

66 [~~(e)~~] (v) other similar document; or

67 (b) an unsolicited proposal, as defined in Section [63G-6a-712](#);

68 (7) information submitted to or by a governmental entity in response to a request for
69 information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict
70 the right of a person to have access to the information, after:

71 (a) a contract directly relating to the subject of the request for information has been
72 awarded and signed by all parties; or

73 (b) (i) a final determination is made not to enter into a contract that relates to the
74 subject of the request for information; and

75 (ii) at least two years have passed after the day on which the request for information is
76 issued;

77 (8) records that would identify real property or the appraisal or estimated value of real
78 or personal property, including intellectual property, under consideration for public acquisition
79 before any rights to the property are acquired unless:

80 (a) public interest in obtaining access to the information is greater than or equal to the
81 governmental entity's need to acquire the property on the best terms possible;

82 (b) the information has already been disclosed to persons not employed by or under a
83 duty of confidentiality to the entity;

84 (c) in the case of records that would identify property, potential sellers of the described
85 property have already learned of the governmental entity's plans to acquire the property;

86 (d) in the case of records that would identify the appraisal or estimated value of
87 property, the potential sellers have already learned of the governmental entity's estimated value
88 of the property; or

89 (e) the property under consideration for public acquisition is a single family residence

90 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
91 the property as required under Section 78B-6-505;

92 (9) records prepared in contemplation of sale, exchange, lease, rental, or other
93 compensated transaction of real or personal property including intellectual property, which, if
94 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
95 of the subject property, unless:

96 (a) the public interest in access is greater than or equal to the interests in restricting
97 access, including the governmental entity's interest in maximizing the financial benefit of the
98 transaction; or

99 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of
100 the value of the subject property have already been disclosed to persons not employed by or
101 under a duty of confidentiality to the entity;

102 (10) records created or maintained for civil, criminal, or administrative enforcement
103 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
104 release of the records:

105 (a) reasonably could be expected to interfere with investigations undertaken for
106 enforcement, discipline, licensing, certification, or registration purposes;

107 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
108 proceedings;

109 (c) would create a danger of depriving a person of a right to a fair trial or impartial
110 hearing;

111 (d) reasonably could be expected to disclose the identity of a source who is not
112 generally known outside of government and, in the case of a record compiled in the course of
113 an investigation, disclose information furnished by a source not generally known outside of
114 government if disclosure would compromise the source; or

115 (e) reasonably could be expected to disclose investigative or audit techniques,
116 procedures, policies, or orders not generally known outside of government if disclosure would
117 interfere with enforcement or audit efforts;

118 (11) records the disclosure of which would jeopardize the life or safety of an
119 individual;

120 (12) records the disclosure of which would jeopardize the security of governmental

121 property, governmental programs, or governmental recordkeeping systems from damage, theft,
122 or other appropriation or use contrary to law or public policy;

123 (13) records that, if disclosed, would jeopardize the security or safety of a correctional
124 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
125 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

126 (14) records that, if disclosed, would reveal recommendations made to the Board of
127 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
128 Board of Pardons and Parole, or the Department of Human Services that are based on the
129 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
130 jurisdiction;

131 (15) records and audit workpapers that identify audit, collection, and operational
132 procedures and methods used by the State Tax Commission, if disclosure would interfere with
133 audits or collections;

134 (16) records of a governmental audit agency relating to an ongoing or planned audit
135 until the final audit is released;

136 (17) records that are subject to the attorney client privilege;

137 (18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer,
138 employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial,
139 quasi-judicial, or administrative proceeding;

140 (19) (a) (i) personal files of a state legislator, including personal correspondence to or
141 from a member of the Legislature; and

142 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of
143 legislative action or policy may not be classified as protected under this section; and

144 (b) (i) an internal communication that is part of the deliberative process in connection
145 with the preparation of legislation between:

146 (A) members of a legislative body;

147 (B) a member of a legislative body and a member of the legislative body's staff; or

148 (C) members of a legislative body's staff; and

149 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
150 legislative action or policy may not be classified as protected under this section;

151 (20) (a) records in the custody or control of the Office of Legislative Research and

152 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
153 legislation or contemplated course of action before the legislator has elected to support the
154 legislation or course of action, or made the legislation or course of action public; and

155 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
156 Office of Legislative Research and General Counsel is a public document unless a legislator
157 asks that the records requesting the legislation be maintained as protected records until such
158 time as the legislator elects to make the legislation or course of action public;

159 (21) research requests from legislators to the Office of Legislative Research and
160 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
161 in response to these requests;

162 (22) drafts, unless otherwise classified as public;

163 (23) records concerning a governmental entity's strategy about:

164 (a) collective bargaining; or

165 (b) imminent or pending litigation;

166 (24) records of investigations of loss occurrences and analyses of loss occurrences that
167 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
168 Uninsured Employers' Fund, or similar divisions in other governmental entities;

169 (25) records, other than personnel evaluations, that contain a personal recommendation
170 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
171 personal privacy, or disclosure is not in the public interest;

172 (26) records that reveal the location of historic, prehistoric, paleontological, or
173 biological resources that if known would jeopardize the security of those resources or of
174 valuable historic, scientific, educational, or cultural information;

175 (27) records of independent state agencies if the disclosure of the records would
176 conflict with the fiduciary obligations of the agency;

177 (28) records of an institution within the state system of higher education defined in
178 Section [53B-1-102](#) regarding tenure evaluations, appointments, applications for admissions,
179 retention decisions, and promotions, which could be properly discussed in a meeting closed in
180 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
181 the final decisions about tenure, appointments, retention, promotions, or those students
182 admitted, may not be classified as protected under this section;

183 (29) records of the governor's office, including budget recommendations, legislative
184 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
185 policies or contemplated courses of action before the governor has implemented or rejected
186 those policies or courses of action or made them public;

187 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
188 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
189 recommendations in these areas;

190 (31) records provided by the United States or by a government entity outside the state
191 that are given to the governmental entity with a requirement that they be managed as protected
192 records if the providing entity certifies that the record would not be subject to public disclosure
193 if retained by it;

194 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
195 except as provided in Section [52-4-206](#);

196 (33) records that would reveal the contents of settlement negotiations but not including
197 final settlements or empirical data to the extent that they are not otherwise exempt from
198 disclosure;

199 (34) memoranda prepared by staff and used in the decision-making process by an
200 administrative law judge, a member of the Board of Pardons and Parole, or a member of any
201 other body charged by law with performing a quasi-judicial function;

202 (35) records that would reveal negotiations regarding assistance or incentives offered
203 by or requested from a governmental entity for the purpose of encouraging a person to expand
204 or locate a business in Utah, but only if disclosure would result in actual economic harm to the
205 person or place the governmental entity at a competitive disadvantage, but this section may not
206 be used to restrict access to a record evidencing a final contract;

207 (36) materials to which access must be limited for purposes of securing or maintaining
208 the governmental entity's proprietary protection of intellectual property rights including patents,
209 copyrights, and trade secrets;

210 (37) the name of a donor or a prospective donor to a governmental entity, including an
211 institution within the state system of higher education defined in Section [53B-1-102](#), and other
212 information concerning the donation that could reasonably be expected to reveal the identity of
213 the donor, provided that:

- 214 (a) the donor requests anonymity in writing;
- 215 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
- 216 classified protected by the governmental entity under this Subsection (37); and
- 217 (c) except for an institution within the state system of higher education defined in
- 218 Section [53B-1-102](#), the governmental unit to which the donation is made is primarily engaged
- 219 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority
- 220 over the donor, a member of the donor's immediate family, or any entity owned or controlled
- 221 by the donor or the donor's immediate family;
- 222 (38) accident reports, except as provided in Sections [41-6a-404](#), [41-12a-202](#), and
- 223 [73-18-13](#);
- 224 (39) a notification of workers' compensation insurance coverage described in Section
- 225 [34A-2-205](#);
- 226 (40) (a) the following records of an institution within the state system of higher
- 227 education defined in Section [53B-1-102](#), which have been developed, discovered, disclosed to,
- 228 or received by or on behalf of faculty, staff, employees, or students of the institution:
- 229 (i) unpublished lecture notes;
- 230 (ii) unpublished notes, data, and information:
- 231 (A) relating to research; and
- 232 (B) of:
- 233 (I) the institution within the state system of higher education defined in Section
- 234 [53B-1-102](#); or
- 235 (II) a sponsor of sponsored research;
- 236 (iii) unpublished manuscripts;
- 237 (iv) creative works in process;
- 238 (v) scholarly correspondence; and
- 239 (vi) confidential information contained in research proposals;
- 240 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
- 241 information required pursuant to Subsection [53B-16-302\(2\)\(a\)](#) or (b); and
- 242 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
- 243 (41) (a) records in the custody or control of the Office of Legislative Auditor General
- 244 that would reveal the name of a particular legislator who requests a legislative audit prior to the

245 date that audit is completed and made public; and

246 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
247 Office of the Legislative Auditor General is a public document unless the legislator asks that
248 the records in the custody or control of the Office of Legislative Auditor General that would
249 reveal the name of a particular legislator who requests a legislative audit be maintained as
250 protected records until the audit is completed and made public;

251 (42) records that provide detail as to the location of an explosive, including a map or
252 other document that indicates the location of:

253 (a) a production facility; or

254 (b) a magazine;

255 (43) information:

256 (a) contained in the statewide database of the Division of Aging and Adult Services
257 created by Section [62A-3-311.1](#); or

258 (b) received or maintained in relation to the Identity Theft Reporting Information
259 System (IRIS) established under Section [67-5-22](#);

260 (44) information contained in the Management Information System and Licensing
261 Information System described in Title 62A, Chapter 4a, Child and Family Services;

262 (45) information regarding National Guard operations or activities in support of the
263 National Guard's federal mission;

264 (46) records provided by any pawn or secondhand business to a law enforcement
265 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
266 Secondhand Merchandise Transaction Information Act;

267 (47) information regarding food security, risk, and vulnerability assessments performed
268 by the Department of Agriculture and Food;

269 (48) except to the extent that the record is exempt from this chapter pursuant to Section
270 [63G-2-106](#), records related to an emergency plan or program, a copy of which is provided to or
271 prepared or maintained by the Division of Emergency Management, and the disclosure of
272 which would jeopardize:

273 (a) the safety of the general public; or

274 (b) the security of:

275 (i) governmental property;

276 (ii) governmental programs; or
277 (iii) the property of a private person who provides the Division of Emergency
278 Management information;
279 (49) records of the Department of Agriculture and Food that provides for the
280 identification, tracing, or control of livestock diseases, including any program established under
281 Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act, or Title 4, Chapter 31, Control
282 of Animal Disease;
283 (50) as provided in Section 26-39-501:
284 (a) information or records held by the Department of Health related to a complaint
285 regarding a child care program or residential child care which the department is unable to
286 substantiate; and
287 (b) information or records related to a complaint received by the Department of Health
288 from an anonymous complainant regarding a child care program or residential child care;
289 (51) unless otherwise classified as public under Section 63G-2-301 and except as
290 provided under Section 41-1a-116, an individual's home address, home telephone number, or
291 personal mobile phone number, if:
292 (a) the individual is required to provide the information in order to comply with a law,
293 ordinance, rule, or order of a government entity; and
294 (b) the subject of the record has a reasonable expectation that this information will be
295 kept confidential due to:
296 (i) the nature of the law, ordinance, rule, or order; and
297 (ii) the individual complying with the law, ordinance, rule, or order;
298 (52) the name, home address, work addresses, and telephone numbers of an individual
299 that is engaged in, or that provides goods or services for, medical or scientific research that is:
300 (a) conducted within the state system of higher education, as defined in Section
301 53B-1-102; and
302 (b) conducted using animals;
303 (53) an initial proposal under Title 63N, Chapter 13, Part 2, Government Procurement
304 Private Proposal Program, to the extent not made public by rules made under that chapter;
305 (54) in accordance with Section 78A-12-203, any record of the Judicial Performance
306 Evaluation Commission concerning an individual commissioner's vote on whether or not to

307 recommend that the voters retain a judge including information disclosed under Subsection
308 [78A-12-203\(5\)\(e\)](#);

309 (55) information collected and a report prepared by the Judicial Performance
310 Evaluation Commission concerning a judge, unless Section [20A-7-702](#) or Title 78A, Chapter
311 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
312 the information or report;

313 (56) records contained in the Management Information System created in Section
314 [62A-4a-1003](#);

315 (57) records provided or received by the Public Lands Policy Coordinating Office in
316 furtherance of any contract or other agreement made in accordance with Section [63J-4-603](#);

317 (58) information requested by and provided to the 911 Division under Section
318 [63H-7a-302](#);

319 (59) in accordance with Section [73-10-33](#):

320 (a) a management plan for a water conveyance facility in the possession of the Division
321 of Water Resources or the Board of Water Resources; or

322 (b) an outline of an emergency response plan in possession of the state or a county or
323 municipality;

324 (60) the following records in the custody or control of the Office of Inspector General
325 of Medicaid Services, created in Section [63A-13-201](#):

326 (a) records that would disclose information relating to allegations of personal
327 misconduct, gross mismanagement, or illegal activity of a person if the information or
328 allegation cannot be corroborated by the Office of Inspector General of Medicaid Services
329 through other documents or evidence, and the records relating to the allegation are not relied
330 upon by the Office of Inspector General of Medicaid Services in preparing a final investigation
331 report or final audit report;

332 (b) records and audit workpapers to the extent they would disclose the identity of a
333 person who, during the course of an investigation or audit, communicated the existence of any
334 Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or
335 regulation adopted under the laws of this state, a political subdivision of the state, or any
336 recognized entity of the United States, if the information was disclosed on the condition that
337 the identity of the person be protected;

338 (c) before the time that an investigation or audit is completed and the final
339 investigation or final audit report is released, records or drafts circulated to a person who is not
340 an employee or head of a governmental entity for the person's response or information;

341 (d) records that would disclose an outline or part of any investigation, audit survey
342 plan, or audit program; or

343 (e) requests for an investigation or audit, if disclosure would risk circumvention of an
344 investigation or audit;

345 (61) records that reveal methods used by the Office of Inspector General of Medicaid
346 Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or
347 abuse;

348 (62) information provided to the Department of Health or the Division of Occupational
349 and Professional Licensing under Subsection 58-68-304(3) or (4);

350 (63) a record described in Section 63G-12-210;

351 (64) captured plate data that is obtained through an automatic license plate reader
352 system used by a governmental entity as authorized in Section 41-6a-2003;

353 (65) any record in the custody of the Utah Office for Victims of Crime relating to a
354 victim, including:

355 (a) a victim's application or request for benefits;

356 (b) a victim's receipt or denial of benefits; and

357 (c) any administrative notes or records made or created for the purpose of, or used to,
358 evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim
359 Reparations Fund;

360 (66) an audio or video recording created by a body-worn camera, as that term is
361 defined in Section 77-7a-103, that records sound or images inside a hospital or health care
362 facility as those terms are defined in Section 78B-3-403, inside a clinic of a health care
363 provider, as that term is defined in Section 78B-3-403, or inside a human service program as
364 that term is defined in Subsection 62A-2-101(19)(a)(vi), except for recordings that:

365 (a) depict the commission of an alleged crime;

366 (b) record any encounter between a law enforcement officer and a person that results in
367 death or bodily injury, or includes an instance when an officer fires a weapon;

368 (c) record any encounter that is the subject of a complaint or a legal proceeding against

369 a law enforcement officer or law enforcement agency;

370 (d) contain an officer involved critical incident as defined in Subsection

371 76-2-408(1)(d); or

372 (e) have been requested for reclassification as a public record by a subject or

373 authorized agent of a subject featured in the recording; and

374 (67) a record pertaining to the search process for a president of an institution of higher

375 education described in Section 53B-2-102, except for application materials for a publicly

376 announced finalist.

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

378 **63G-6a-103. Definitions.**

379 As used in this chapter:

380 (1) "Applicable rulemaking authority" means:

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

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

383 (c) (i) only to the extent of the procurement authority expressly granted to the

384 procurement unit by statute:

385 (A) for the building board or the Division of Facilities Construction and Management,
386 created in Section 63A-5-201, the building board;

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

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

389 director of the Department of Transportation; and

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

391 (d) for a local government procurement unit:

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

393 (ii) an individual or body designated by the legislative body of the local government

394 procurement unit;

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

397 (f) for a state institution of higher education described in:

398 (i) Subsections 53B-1-102(1)(a) and (c), the State Board of Regents; or

399 (ii) Subsection 53B-1-102(1)(b), the Utah System of Technical Colleges Board of

400 Trustees;

401 (g) for the State Board of Education, the State Board of Education;

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

403 (i) for a local district other than a public transit district or for a special service district:

404 (i) before January 1, 2015, the board of trustees of the local district or the governing
405 body of the special service district; or

406 (ii) on or after January 1, 2015, the board, except to the extent that the board of trustees
407 of the local district or the governing body of the special service district makes its own rules:

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

409 (B) that are in addition to board rules; or

410 (j) for any other procurement unit, the board.

411 (2) "Approved vendor" means a [~~vendor~~] person who has been approved for inclusion
412 on an approved vendor list through the approved vendor list process.

413 (3) "Approved vendor list" means a list of approved vendors established under Section
414 [63G-6a-507](#).

415 (4) "Approved vendor list process" means the procurement process described in
416 Section [63G-6a-507](#).

417 (5) "Bidder" means a person who submits a bid or price quote in response to an
418 invitation for bids.

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

420 (7) "Board" means the Utah State Procurement Policy Board, created in Section
421 [63G-6a-202](#).

422 (8) "Building board" means the State Building Board, created in Section [63A-5-101](#).

423 (9) "Change directive" means a written order signed by the procurement officer that
424 directs the contractor to suspend work or make changes, as authorized by contract, without the
425 consent of the contractor.

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

429 (11) "Chief procurement officer" means the chief procurement officer appointed under
430 Subsection [63G-6a-302\(1\)](#).

- 431 (12) "Conducting procurement unit" means a procurement unit that conducts all
432 aspects of a procurement:
- 433 (a) except:
- 434 (i) reviewing a solicitation to verify that it is in proper form; and
435 (ii) causing the publication of a notice of a solicitation; and
436 (b) including:
- 437 (i) preparing any solicitation document;
438 (ii) appointing an evaluation committee;
439 (iii) conducting the evaluation process, except as provided in Subsection
440 [63G-6a-707\(6\)\(b\)](#) relating to scores calculated for costs of proposals;
441 (iv) selecting and recommending the person to be awarded a contract;
442 (v) negotiating the terms and conditions of a contract, subject to the issuing
443 procurement unit's approval; and
444 (vi) contract administration.
- 445 (13) "Conservation district" means the same as that term is defined in Section
446 [17D-3-102](#).
- 447 (14) "Construction":
- 448 (a) means services, including work, and supplies for a project for the construction,
449 renovation, alteration, improvement, or repair of a public facility on real property; and
450 (b) does not include services and supplies for the routine, day-to-day operation, repair,
451 or maintenance of an existing public facility.
- 452 (15) "Construction manager/general contractor":
- 453 (a) means a contractor who enters into a contract:
- 454 (i) for the management of a construction project; and
455 (ii) that allows the contractor to subcontract for additional labor and materials that are
456 not included in the contractor's cost proposal submitted at the time of the procurement of the
457 contractor's services; and
458 (b) does not include a contractor whose only subcontract work not included in the
459 contractor's cost proposal submitted as part of the procurement of the contractor's services is to
460 meet subcontracted portions of change orders approved within the scope of the project.
- 461 (16) "Construction subcontractor":

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

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

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

468 (17) "Contract" means an agreement for a procurement.

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

472 (a) implementing the contract;

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

475 (c) executing change orders;

476 (d) processing contract amendments;

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

478 (f) curing contract errors and deficiencies;

479 (g) terminating a contract;

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

481 (i) computing payments under the contract; and

482 (j) closing out a contract.

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

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

485 (a) more than one procurement unit; or

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

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

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

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

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

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

500 ~~[(27)]~~ (26) "Design professional" means:

501 (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects
502 Licensing Act; or

503 (b) an individual licensed as a professional engineer or professional land surveyor
504 under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing
505 Act.

506 ~~[(28)]~~ (27) "Design professional procurement process" means the procurement process
507 described in Part 15, Design Professional Services.

508 ~~[(26)]~~ (28) "Design-build" means the procurement of design professional services and
509 construction by the use of a single contract.

510 (29) "Design professional services" means:

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

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

514 (c) master planning and programming services.

515 (30) "Director" means the director of the division.

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

518 (32) "Educational procurement unit" means:

519 (a) a school district;

520 (b) a public school, including a local school board or a charter school;

521 (c) the Utah Schools for the Deaf and Blind;

522 (d) the Utah Education and Telehealth Network;

523 (e) an institution of higher education of the state described in Section [53B-1-102](#); or

524 (f) the State Board of Education.

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

527 (a) is regularly maintained by a manufacturer or contractor;

528 (b) is published or otherwise available for inspection by customers; and

529 (c) states prices at which sales are currently or were last made to a significant number
530 of any category of buyers or buyers constituting the general buying public for the supplies or
531 services involved.

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

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

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

539 (b) an adjustment is required by law.

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

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

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

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

548 (38) "Head of a procurement unit" means:

549 (a) for a legislative procurement unit, any person designated by rule made by the
550 applicable rulemaking authority;

551 (b) for an executive branch procurement unit:

552 (i) the director of the division; or

553 (ii) any other person designated by the board, by rule;

554 (c) for a judicial procurement unit:

- 555 (i) the Judicial Council; or
- 556 (ii) any other person designated by the Judicial Council, by rule;
- 557 (d) for a local government procurement unit:
- 558 (i) the legislative body of the local government procurement unit; or
- 559 (ii) any other person designated by the local government procurement unit;
- 560 (e) for a local district other than a public transit district, the board of trustees of the
- 561 local district or a designee of the board of trustees;
- 562 (f) for a special service district, the governing body of the special service district or a
- 563 designee of the governing body;
- 564 (g) for a local building authority, the board of directors of the local building authority or
- 565 a designee of the board of directors;
- 566 (h) for a conservation district, the board of supervisors of the conservation district or a
- 567 designee of the board of supervisors;
- 568 (i) for a public corporation, the board of directors of the public corporation or a
- 569 designee of the board of directors;
- 570 (j) for a school district or any school or entity within a school district, the board of the
- 571 school district, or the board's designee;
- 572 (k) for a charter school, the individual or body with executive authority over the charter
- 573 school, or the individual's or body's designee;
- 574 (l) for an institution of higher education described in Section [53B-2-101](#), the president
- 575 of the institution of higher education, or the president's designee;
- 576 (m) for a public transit district, the board of trustees or a designee of the board of
- 577 trustees; or
- 578 (n) for the State Board of Education, the State Board of Education or a designee of the
- 579 State Board of Education.
- 580 (39) "Immaterial error":
- 581 (a) means an irregularity or abnormality that is:
- 582 (i) a matter of form that does not affect substance; or
- 583 (ii) an inconsequential variation from a requirement of a solicitation that has no, little,
- 584 or a trivial effect on the procurement process and that is not prejudicial to other vendors; and
- 585 (b) includes:

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

588 (ii) a typographical error;

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

590 (iv) any other error that the chief procurement officer or the head of a procurement unit
591 with independent procurement authority reasonably considers to be immaterial.

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

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

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

596 (ii) provides a maximum purchase limit.

597 (41) "Independent procurement authority" means authority granted to a procurement
598 unit under Subsection [63G-6a-106\(4\)\(a\)](#).

599 (42) "Invitation for bids":

600 (a) means a document used to solicit:

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

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

603 (b) includes all documents attached to or incorporated by reference in a document
604 described in Subsection (42)(a).

605 (43) "Issuing procurement unit" means a procurement unit that:

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

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

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

609 (44) "Judicial procurement unit" means:

610 (a) the Utah Supreme Court;

611 (b) the Utah Court of Appeals;

612 (c) the Judicial Council;

613 (d) a state judicial district; or

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

616 (45) "Labor hour contract" is a contract under which:

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

618 (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and

619 profit for a specified number of labor hours or days.

620 (46) "Legislative procurement unit" means:

621 (a) the Legislature;

622 (b) the Senate;

623 (c) the House of Representatives;

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

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

626 (i) within the state legislative branch; or

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

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

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

631 (47) "Local building authority" means the same as that term is defined in Section

632 [17D-2-102](#).

633 (48) "Local district" means the same as that term is defined in Section [17B-1-102](#).

634 (49) "Local government procurement unit" means:

635 (a) a county or municipality, and each office or agency of the county or municipality,
636 unless the county or municipality adopts its own procurement code by ordinance;

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

639 (c) a county or municipality that has adopted a portion of this chapter by ordinance, to
640 the extent that a term in the ordinance is used in the adopted portion of this chapter, and each
641 office or agency of that county or municipality.

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

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

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

- 648 (53) "Nonadopting local government procurement unit" means:
- 649 (a) a county or municipality that has not adopted Part 16, Protests, Part 17,
- 650 Procurement Appeals Board, Part 18, Appeals to Court and Court Proceedings, and Part 19,
- 651 General Provisions Related to Protest or Appeal; and
- 652 (b) each office or agency of a county or municipality described in Subsection (53)(a).
- 653 (54) "Offeror" means a person who submits a proposal in response to a request for
- 654 proposals.
- 655 (55) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference
- 656 under the requirements of this chapter.
- 657 (56) "Procure" means to acquire a procurement item through a procurement.
- 658 (57) "Procurement":
- 659 (a) means a procurement unit's acquisition of a procurement item through an
- 660 expenditure of public funds, or an agreement to expend public funds, including an acquisition
- 661 through a public-private partnership;
- 662 (b) includes all functions that pertain to the acquisition of a procurement item,
- 663 including:
- 664 (i) preparing and issuing a solicitation; and
- 665 (ii) (A) conducting a standard procurement process; or
- 666 (B) conducting a procurement process that is an exception to a standard procurement
- 667 process under Part 8, Exceptions to Procurement Requirements; and
- 668 (c) does not include a grant.
- 669 (58) "Procurement item" means a supply, a service, or construction.
- 670 (59) "Procurement officer" means:
- 671 (a) for a procurement unit with independent procurement authority:
- 672 (i) the head of the procurement unit;
- 673 (ii) a designee of the head of the procurement unit; or
- 674 (iii) a person designated by rule made by the applicable rulemaking authority; or
- 675 (b) for the division or a procurement unit without independent procurement authority,
- 676 the chief procurement officer.
- 677 (60) "Procurement unit":
- 678 (a) means:

- 679 (i) a legislative procurement unit;
- 680 (ii) an executive branch procurement unit;
- 681 (iii) a judicial procurement unit;
- 682 (iv) an educational procurement unit;
- 683 (v) a local government procurement unit;
- 684 (vi) a local district;
- 685 (vii) a special service district;
- 686 (viii) a local building authority;
- 687 (ix) a conservation district;
- 688 (x) a public corporation; or
- 689 (xi) a public transit district; and
- 690 (b) does not include a political subdivision created under Title 11, Chapter 13,
- 691 Interlocal Cooperation Act.
- 692 (61) "Professional service" means labor, effort, or work that requires an elevated
- 693 degree of specialized knowledge and discretion, including labor, effort, or work in the field of:
- 694 (a) accounting;
- 695 (b) administrative law judge service;
- 696 (c) architecture;
- 697 (d) construction design and management;
- 698 (e) engineering;
- 699 (f) financial services;
- 700 (g) information technology;
- 701 (h) the law;
- 702 (i) medicine;
- 703 (j) psychiatry; or
- 704 (k) underwriting.
- 705 (62) "Protest officer" means:
- 706 (a) for the division or a procurement unit with independent procurement authority:
- 707 (i) the head of the procurement unit;
- 708 (ii) the head of the procurement unit's designee who is an employee of the procurement
- 709 unit; or

710 (iii) a person designated by rule made by the applicable rulemaking authority; or
711 (b) for a procurement unit without independent procurement authority, the chief
712 procurement officer or the chief procurement officer's designee who is an employee of the
713 division.

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

715 (64) "Public entity" means any government entity of the state or political subdivision of
716 the state, including:

717 (a) a procurement unit;

718 (b) a municipality or county, regardless of whether the municipality or county has
719 adopted this chapter or any part of this chapter; and

720 (c) any other government entity located in the state that expends public funds.

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

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

725 [~~68~~] (67) "Public transit district" means a public transit district organized under Title
726 17B, Chapter 2a, Part 8, Public Transit District Act.

727 [~~67~~] (68) "Public-private partnership" means an arrangement or agreement, occurring
728 on or after January 1, 2017, between a procurement unit and one or more contractors to provide
729 for a public need through the development or operation of a project in which the contractor or
730 contractors share with the procurement unit the responsibility or risk of developing, owning,
731 maintaining, financing, or operating the project.

732 (69) "Qualified vendor" means a vendor who:

733 (a) is responsible; and

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

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

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

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

744 (73) "Request for proposals process" means the procurement process described in Part
745 7, Request for Proposals.

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

750 (75) "Requirements contract" means a contract:

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

753 (b) that:

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

755 (ii) provides a maximum purchase limit.

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

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

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

760 (77) "Responsive" means conforming in all material respects to the requirements of a
761 solicitation.

762 (78) "Sealed" means manually or electronically secured to prevent disclosure.

763 (79) "Service":

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

766 (b) includes a professional service; and

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

769 (80) "Small purchase process" means the procurement process described in Section
770 [63G-6a-506](#).

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

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

775 (83) "Solicitation" means an invitation for bids, request for proposals, request for
776 statement of qualifications, or request for information.

777 (84) "Solicitation response" means:

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

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

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

782 (85) "Special service district" means the same as that term is defined in Section
783 17D-1-102.

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

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

788 (b) preparing a procurement item for delivery.

789 (87) "Standard procurement process" means:

790 (a) the bidding process;

791 (b) the request for proposals process;

792 (c) the approved vendor list process;

793 (d) the small purchase process; or

794 (e) the design professional procurement process.

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

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

799 (90) "Subcontractor":

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

803 control of the contractor; and

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

806 (91) "Supply" means a good, material, technology, piece of equipment, or any other
807 item of personal property.

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

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

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

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

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

815 (94) "Transitional costs":

816 (a) means the costs of changing:

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

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

820 (b) includes:

821 (i) training costs;

822 (ii) conversion costs;

823 (iii) compatibility costs;

824 (iv) costs associated with system downtime;

825 (v) disruption of service costs;

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

827 (vii) installation costs; and

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

829 (c) does not include:

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

831 (ii) contract negotiation or drafting costs.

832 (95) "Trial use contract" means a contract for a procurement item that the procurement
833 unit acquires for a trial use or testing to determine whether the procurement item will benefit

834 the procurement unit.

835 (96) "Vendor":

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

838 (b) includes:

839 (i) a bidder;

840 (ii) an offeror;

841 (iii) an approved vendor; ~~and~~

842 (iv) a design professional[-]; and

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

844 Section 3. Section **63G-6a-712** is enacted to read:

845 **63G-6a-712. Unsolicited proposals.**

846 (1) As used in this section, "unsolicited proposal":

847 (a) means a written proposal:

848 (i) for a public-private partnership; and

849 (ii) that is not submitted in response to a solicitation; and

850 (b) does not include an initial proposal, as defined in Section [63G-6a-711](#).

851 (2) (a) Subject to Subsection (2)(b), a person may submit an unsolicited proposal to a
852 procurement unit at any time.

853 (b) An unsolicited proposal may not be used to seek a procurement unit's consideration
854 of a proposal after the expiration of the time for submitting proposals in response to a request
855 for proposals.

856 (3) An unsolicited proposal shall include:

857 (a) a conceptual description of the project that constitutes the procurement item that is
858 the subject of the proposed public-private partnership;

859 (b) a description of the economic benefit of the project to the state and the procurement
860 unit;

861 (c) information concerning the products, services, and supplies currently being
862 provided by the state or procurement unit that are similar to the project;

863 (d) an estimate of the project costs for:

864 (i) design;

- 865 (ii) implementation;
866 (iii) operation and maintenance; and
867 (iv) any other related project cost; and
868 (e) the name, address, telephone number, and email address of an individual who may
869 be contacted for further information concerning the unsolicited proposal.
- 870 (4) A procurement unit is not required to consider an unsolicited proposal.
871 (5) A procurement unit may charge a person submitting an unsolicited proposal a fee to
872 cover the actual cost of processing, considering, and evaluating the unsolicited proposal.
- 873 (6) A procurement unit that receives an unsolicited proposal may not award a contract
874 for the procurement item described in the unsolicited proposal unless:
- 875 (a) the procurement unit first engages in a standard procurement process for proposals
876 to provide the procurement item described in the unsolicited proposal; or
877 (b) awarding the contract without the procurement unit engaging in a standard
878 procurement process is allowed under Section [63G-6a-802](#).
- 879 (7) If a procurement unit engages in a standard procurement process pursuant to
880 Subsection (6)(a):
- 881 (a) the procurement unit shall treat an unsolicited proposal as though it were submitted
882 as a proposal in response to the solicitation; and
- 883 (b) a person who has submitted an unsolicited proposal may, within the time provided
884 in the solicitation for the submission of proposals, modify the unsolicited proposal to the extent
885 necessary to address matters raised in the solicitation that were not addressed in the initial
886 unsolicited proposal.
- 887 (8) An applicable rulemaking authority may make rules to govern the submission,
888 processing, consideration, and evaluation of an unsolicited proposal, including fees relating to
889 the unsolicited proposal.
- 890 (9) An unsolicited proposal is subject to Chapter 2, Government Records Access and
891 Management Act, including, if applicable, provisions relating to a written claim of business
892 confidentiality, as provided in Section [63G-2-309](#), for trade secrets, commercial information, or
893 nonindividual financial information described in Subsection [63G-2-305](#)(1) or (2).

Legislative Review Note
Office of Legislative Research and General Counsel