

1 **DESIGN PROFESSIONAL SERVICES PROCUREMENT AMENDMENTS**

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Bridger Bolinder

Senate Sponsor: Daniel McCay

2

3 **LONG TITLE**

4 **General Description:**

5 This bill modifies provisions of the Utah Procurement Code.

6 **Highlighted Provisions:**

7 This bill:

- 8 ▸ modifies the definition of design professional, for purposes of the Utah Procurement
9 Code, to include landscape architects.

10 **Money Appropriated in this Bill:**

11 None

12 **Other Special Clauses:**

13 None

14 **Utah Code Sections Affected:**

15 AMENDS:

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

17

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

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

20 **63G-6a-103 . Definitions.**

21 As used in this chapter:

- 22 (1) "Approved vendor" means a person who has been approved for inclusion on an
23 approved vendor list through the approved vendor list process.
- 24 (2) "Approved vendor list" means a list of approved vendors established under Section
25 63G-6a-507.
- 26 (3) "Approved vendor list process" means the procurement process described in Section
27 63G-6a-507.
- 28 (4) "Bidder" means a person who submits a bid or price quote in response to an invitation

- 29 for bids.
- 30 (5) "Bidding process" means the procurement process described in Part 6, Bidding.
- 31 (6) "Board" means the Utah State Procurement Policy Board, created in Section 63G-6a-202.
- 32 (7) "Change directive" means a written order signed by the procurement officer that directs
33 the contractor to suspend work or make changes, as authorized by contract, without the
34 consent of the contractor.
- 35 (8) "Change order" means a written alteration in specifications, delivery point, rate of
36 delivery, period of performance, price, quantity, or other provisions of a contract, upon
37 mutual agreement of the parties to the contract.
- 38 (9) "Chief procurement officer" means the individual appointed under Section 63A-2-102.
- 39 (10) "Conducting procurement unit" means a procurement unit that conducts all aspects of a
40 procurement:
- 41 (a) except:
- 42 (i) reviewing a solicitation to verify that it is in proper form; and
43 (ii) causing the publication of a notice of a solicitation; and
- 44 (b) including:
- 45 (i) preparing any solicitation document;
46 (ii) appointing an evaluation committee;
47 (iii) conducting the evaluation process, except the process relating to scores
48 calculated for costs of proposals;
49 (iv) selecting and recommending the person to be awarded a contract;
50 (v) negotiating the terms and conditions of a contract, subject to the issuing
51 procurement unit's approval; and
52 (vi) contract administration.
- 53 (11) "Conservation district" means the same as that term is defined in Section 17D-3-102.
- 54 (12) "Construction project":
- 55 (a) means a project for the construction, renovation, alteration, improvement, or repair of
56 a public facility on real property, including all services, labor, supplies, and materials
57 for the project; and
- 58 (b) does not include services and supplies for the routine, day-to-day operation, repair,
59 or maintenance of an existing public facility.
- 60 (13) "Construction manager/general contractor":
- 61 (a) means a contractor who enters into a contract:
- 62 (i) for the management of a construction project; and

- 63 (ii) that allows the contractor to subcontract for additional labor and materials that are
64 not included in the contractor's cost proposal submitted at the time of the
65 procurement of the contractor's services; and
- 66 (b) does not include a contractor whose only subcontract work not included in the
67 contractor's cost proposal submitted as part of the procurement of the contractor's
68 services is to meet subcontracted portions of change orders approved within the
69 scope of the project.
- 70 (14) "Construction subcontractor":
- 71 (a) means a person under contract with a contractor or another subcontractor to provide
72 services or labor for the design or construction of a construction project;
- 73 (b) includes a general contractor or specialty contractor licensed or exempt from
74 licensing under Title 58, Chapter 55, Utah Construction Trades Licensing Act; and
- 75 (c) does not include a supplier who provides only materials, equipment, or supplies to a
76 contractor or subcontractor for a construction project.
- 77 (15) "Contract" means an agreement for a procurement.
- 78 (16) "Contract administration" means all functions, duties, and responsibilities associated
79 with managing, overseeing, and carrying out a contract between a procurement unit and
80 a contractor, including:
- 81 (a) implementing the contract;
- 82 (b) ensuring compliance with the contract terms and conditions by the conducting
83 procurement unit and the contractor;
- 84 (c) executing change orders;
- 85 (d) processing contract amendments;
- 86 (e) resolving, to the extent practicable, contract disputes;
- 87 (f) curing contract errors and deficiencies;
- 88 (g) terminating a contract;
- 89 (h) measuring or evaluating completed work and contractor performance;
- 90 (i) computing payments under the contract; and
- 91 (j) closing out a contract.
- 92 (17) "Contractor" means a person who is awarded a contract with a procurement unit.
- 93 (18) "Cooperative procurement" means procurement conducted by, or on behalf of:
- 94 (a) more than one procurement unit; or
- 95 (b) a procurement unit and a cooperative purchasing organization.
- 96 (19) "Cooperative purchasing organization" means an organization, association, or alliance

- 97 of purchasers established to combine purchasing power in order to obtain the best value
98 for the purchasers by engaging in procurements in accordance with Section 63G-6a-2105.
- 99 (20) "Cost-plus-a-percentage-of-cost contract" means a contract under which the contractor
100 is paid a percentage of the total actual expenses or costs in addition to the contractor's
101 actual expenses or costs.
- 102 (21) "Cost-reimbursement contract" means a contract under which a contractor is
103 reimbursed for costs which are allowed and allocated in accordance with the contract
104 terms and the provisions of this chapter, and a fee, if any.
- 105 (22) "Days" means calendar days, unless expressly provided otherwise.
- 106 (23) "Definite quantity contract" means a fixed price contract that provides for a specified
107 amount of supplies over a specified period, with deliveries scheduled according to a
108 specified schedule.
- 109 (24) "Design professional" means:
- 110 (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects
111 Licensing Act;
- 112 (b) an individual licensed as a professional engineer or professional land surveyor under
113 Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors
114 Licensing Act;
- 115 (c) an individual licensed under Title 58, Chapter 53, Landscape Architects Licensing
116 Act, to engage in the practice of landscape architecture, as defined in Section
117 58-53-102; or
- 118 [(e)] (d) an individual certified as a commercial interior designer under Title 58, Chapter
119 86, State Certification of Commercial Interior Designers Act.
- 120 (25) "Design professional procurement process" means the procurement process described
121 in Part 15, Design Professional Services.
- 122 (26) "Design professional services" means:
- 123 (a) professional services within the scope of the practice of architecture as defined in
124 Section 58-3a-102;
- 125 (b) professional engineering as defined in Section 58-22-102;
- 126 (c) master planning and programming services;
- 127 (d) professional services within the scope of the practice of landscape architecture, as
128 defined in Section 58-53-102; or
- 129 [(d)] (e) services within the scope of the practice of commercial interior design, as
130 defined in Section 58-86-102.

- 131 (27) "Design-build" means the procurement of design professional services and
132 construction by the use of a single contract.
- 133 (28) "Division" means the Division of Purchasing and General Services, created in Section
134 63A-2-101.
- 135 (29) "Educational procurement unit" means:
- 136 (a) a school district;
- 137 (b) a public school, including a local school board or a charter school;
- 138 (c) the Utah Schools for the Deaf and the Blind;
- 139 (d) the Utah Education and Telehealth Network;
- 140 (e) an institution of higher education of the state described in Section 53B-1-102; or
- 141 (f) the State Board of Education.
- 142 (30) "Established catalogue price" means the price included in a catalogue, price list,
143 schedule, or other form that:
- 144 (a) is regularly maintained by a manufacturer or contractor;
- 145 (b) is published or otherwise available for inspection by customers; and
- 146 (c) states prices at which sales are currently or were last made to a significant number of
147 any category of buyers or buyers constituting the general buying public for the
148 supplies or services involved.
- 149 (31) (a) "Executive branch procurement unit" means a department, division, office,
150 bureau, agency, or other organization within the state executive branch.
- 151 (b) "Executive branch procurement unit" does not include the Colorado River Authority
152 of Utah as provided in Section 63M-14-210.
- 153 (32) "Facilities division" means the Division of Facilities Construction and Management,
154 created in Section 63A-5b-301.
- 155 (33) "Fixed price contract" means a contract that provides a price, for each procurement
156 item obtained under the contract, that is not subject to adjustment except to the extent
157 that:
- 158 (a) the contract provides, under circumstances specified in the contract, for an
159 adjustment in price that is not based on cost to the contractor; or
- 160 (b) an adjustment is required by law.
- 161 (34) "Fixed price contract with price adjustment" means a fixed price contract that provides
162 for an upward or downward revision of price, precisely described in the contract, that:
- 163 (a) is based on the consumer price index or another commercially acceptable index,
164 source, or formula; and

- 165 (b) is not based on a percentage of the cost to the contractor.
- 166 (35) "Grant" means an expenditure of public funds or other assistance, or an agreement to
167 expend public funds or other assistance, for a public purpose authorized by law, without
168 acquiring a procurement item in exchange.
- 169 (36) "Immaterial error":
- 170 (a) means an irregularity or abnormality that is:
- 171 (i) a matter of form that does not affect substance; or
- 172 (ii) an inconsequential variation from a requirement of a solicitation that has no, little,
173 or a trivial effect on the procurement process and that is not prejudicial to other
174 vendors; and
- 175 (b) includes:
- 176 (i) a missing signature, missing acknowledgment of an addendum, or missing copy of
177 a professional license, bond, or insurance certificate;
- 178 (ii) a typographical error;
- 179 (iii) an error resulting from an inaccuracy or omission in the solicitation; and
- 180 (iv) any other error that the procurement official reasonably considers to be
181 immaterial.
- 182 (37) "Indefinite quantity contract" means a fixed price contract that:
- 183 (a) is for an indefinite amount of procurement items to be supplied as ordered by a
184 procurement unit; and
- 185 (b) (i) does not require a minimum purchase amount; or
186 (ii) provides a maximum purchase limit.
- 187 (38) "Independent procurement unit" means:
- 188 (a) (i) a legislative procurement unit;
- 189 (ii) a judicial branch procurement unit;
- 190 (iii) an educational procurement unit;
- 191 (iv) a local government procurement unit;
- 192 (v) a conservation district;
- 193 (vi) a local building authority;
- 194 (vii) a special district;
- 195 (viii) a public corporation;
- 196 (ix) a special service district; or
- 197 (x) the Utah Communications Authority, established in Section 63H-7a-201;
- 198 (b) the facilities division, but only to the extent of the procurement authority provided

- 199 under Title 63A, Chapter 5b, Administration of State Facilities;
- 200 (c) the attorney general, but only to the extent of the procurement authority provided
- 201 under Title 67, Chapter 5, Attorney General;
- 202 (d) the Department of Transportation, but only to the extent of the procurement authority
- 203 provided under Title 72, Transportation Code; or
- 204 (e) any other executive branch department, division, office, or entity that has statutory
- 205 procurement authority outside this chapter, but only to the extent of that statutory
- 206 procurement authority.
- 207 (39) "Invitation for bids":
- 208 (a) means a document used to solicit:
- 209 (i) bids to provide a procurement item to a procurement unit; or
- 210 (ii) quotes for a price of a procurement item to be provided to a procurement unit; and
- 211 (b) includes all documents attached to or incorporated by reference in a document
- 212 described in Subsection (39)(a).
- 213 (40) "Issuing procurement unit" means a procurement unit that:
- 214 (a) reviews a solicitation to verify that it is in proper form;
- 215 (b) causes the notice of a solicitation to be published; and
- 216 (c) negotiates and approves the terms and conditions of a contract.
- 217 (41) "Judicial procurement unit" means:
- 218 (a) the Utah Supreme Court;
- 219 (b) the Utah Court of Appeals;
- 220 (c) the Judicial Council;
- 221 (d) a state judicial district; or
- 222 (e) an office, committee, subcommittee, or other organization within the state judicial
- 223 branch.
- 224 (42) "Labor hour contract" is a contract under which:
- 225 (a) the supplies and materials are not provided by, or through, the contractor; and
- 226 (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and profit
- 227 for a specified number of labor hours or days.
- 228 (43) "Legislative procurement unit" means:
- 229 (a) the Legislature;
- 230 (b) the Senate;
- 231 (c) the House of Representatives;
- 232 (d) a staff office of the Legislature, the Senate, or the House of Representatives; or

- 233 (e) a committee, subcommittee, commission, or other organization:
234 (i) within the state legislative branch; or
235 (ii) (A) that is created by statute to advise or make recommendations to the
236 Legislature;
237 (B) the membership of which includes legislators; and
238 (C) for which the Office of Legislative Research and General Counsel provides
239 staff support.
- 240 (44) "Local building authority" means the same as that term is defined in Section 17D-2-102.
- 241 (45) "Local government procurement unit" means:
242 (a) a county, municipality, or project entity, and each office of the county, municipality,
243 or project entity, unless:
244 (i) the county or municipality adopts a procurement code by ordinance; or
245 (ii) the project entity adopts a procurement code through the process described in
246 Section 11-13-316;
247 (b) (i) a county or municipality that has adopted this entire chapter by ordinance, and
248 each office or agency of that county or municipality; and
249 (ii) a project entity that has adopted this entire chapter through the process described
250 in Subsection 11-13-316; or
251 (c) a county, municipality, or project entity, and each office of the county, municipality,
252 or project entity that has adopted a portion of this chapter to the extent that:
253 (i) a term in the ordinance is used in the adopted chapter; or
254 (ii) a term in the ordinance is used in the language a project entity adopts in its
255 procurement code through the process described in Section 11-13-316.
- 256 (46) "Multiple award contracts" means the award of a contract for an indefinite quantity of
257 a procurement item to more than one person.
- 258 (47) "Multiyear contract" means a contract that extends beyond a one-year period,
259 including a contract that permits renewal of the contract, without competition, beyond
260 the first year of the contract.
- 261 (48) "Municipality" means a city, town, or metro township.
- 262 (49) "Nonadopting local government procurement unit" means:
263 (a) a county or municipality that has not adopted Part 16, Protests, Part 17, Procurement
264 Appeals Board, Part 18, Appeals to Court and Court Proceedings, and Part 19,
265 General Provisions Related to Protest or Appeal; and
266 (b) each office or agency of a county or municipality described in Subsection (49)(a).

- 267 (50) "Offeror" means a person who submits a proposal in response to a request for
268 proposals.
- 269 (51) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference
270 under the requirements of this chapter.
- 271 (52) "Procure" means to acquire a procurement item through a procurement.
- 272 (53) "Procurement" means the acquisition of a procurement item through an expenditure of
273 public funds, or an agreement to expend public funds, including an acquisition through a
274 public-private partnership.
- 275 (54) "Procurement item" means an item of personal property, a technology, a service, or a
276 construction project.
- 277 (55) "Procurement official" means:
- 278 (a) for a procurement unit other than an independent procurement unit, the chief
279 procurement officer;
- 280 (b) for a legislative procurement unit, the individual, individuals, or body designated in a
281 policy adopted by the Legislative Management Committee;
- 282 (c) for a judicial procurement unit, the Judicial Council or an individual or body
283 designated by the Judicial Council by rule;
- 284 (d) for a local government procurement unit:
- 285 (i) the legislative body of the local government procurement unit; or
286 (ii) an individual or body designated by the local government procurement unit;
- 287 (e) for a special district, the board of trustees of the special district or the board of
288 trustees' designee;
- 289 (f) for a special service district, the governing body of the special service district or the
290 governing body's designee;
- 291 (g) for a local building authority, the board of directors of the local building authority or
292 the board of directors' designee;
- 293 (h) for a conservation district, the board of supervisors of the conservation district or the
294 board of supervisors' designee;
- 295 (i) for a public corporation, the board of directors of the public corporation or the board
296 of directors' designee;
- 297 (j) for a school district or any school or entity within a school district, the board of the
298 school district or the board's designee;
- 299 (k) for a charter school, the individual or body with executive authority over the charter
300 school or the designee of the individual or body;

- 301 (l) for an institution of higher education described in Section 53B-2-101, the president of
302 the institution of higher education or the president's designee;
- 303 (m) for the State Board of Education, the State Board of Education or the State Board of
304 Education's designee;
- 305 (n) for the Utah Board of Higher Education, the Commissioner of Higher Education or
306 the designee of the Commissioner of Higher Education;
- 307 (o) for the Utah Communications Authority, established in Section 63H-7a-201, the
308 executive director of the Utah Communications Authority or the executive director's
309 designee; or
- 310 (p) (i) for the facilities division, and only to the extent of procurement activities of
311 the facilities division as an independent procurement unit under the procurement
312 authority provided under Title 63A, Chapter 5b, Administration of State Facilities,
313 the director of the facilities division or the director's designee;
- 314 (ii) for the attorney general, and only to the extent of procurement activities of the
315 attorney general as an independent procurement unit under the procurement
316 authority provided under Title 67, Chapter 5, Attorney General, the attorney
317 general or the attorney general's designee;
- 318 (iii) for the Department of Transportation created in Section 72-1-201, and only to
319 the extent of procurement activities of the Department of Transportation as an
320 independent procurement unit under the procurement authority provided under
321 Title 72, Transportation Code, the executive director of the Department of
322 Transportation or the executive director's designee; or
- 323 (iv) for any other executive branch department, division, office, or entity that has
324 statutory procurement authority outside this chapter, and only to the extent of the
325 procurement activities of the department, division, office, or entity as an
326 independent procurement unit under the procurement authority provided outside
327 this chapter for the department, division, office, or entity, the chief executive
328 officer of the department, division, office, or entity or the chief executive officer's
329 designee.
- 330 (56) "Procurement unit":
- 331 (a) means:
- 332 (i) a legislative procurement unit;
- 333 (ii) an executive branch procurement unit;
- 334 (iii) a judicial procurement unit;

- 335 (iv) an educational procurement unit;
- 336 (v) the Utah Communications Authority, established in Section 63H-7a-201;
- 337 (vi) a local government procurement unit;
- 338 (vii) a special district;
- 339 (viii) a special service district;
- 340 (ix) a local building authority;
- 341 (x) a conservation district; and
- 342 (xi) a public corporation; and
- 343 (b) except for a project entity, to the extent that a project entity is subject to this chapter
- 344 as described in Section 11-13-316, does not include a political subdivision created
- 345 under Title 11, Chapter 13, Interlocal Cooperation Act.
- 346 (57) "Professional service" means labor, effort, or work that requires specialized
- 347 knowledge, expertise, and discretion, including labor, effort, or work in the field of:
- 348 (a) accounting;
- 349 (b) administrative law judge service;
- 350 (c) architecture;
- 351 (d) construction design and management;
- 352 (e) engineering;
- 353 (f) financial services;
- 354 (g) information technology;
- 355 (h) the law;
- 356 (i) medicine;
- 357 (j) psychiatry; or
- 358 (k) underwriting.
- 359 (58) "Protest officer" means:
- 360 (a) for the division or an independent procurement unit:
- 361 (i) the procurement official;
- 362 (ii) the procurement official's designee who is an employee of the procurement unit;
- 363 or
- 364 (iii) a person designated by rule made by the rulemaking authority; or
- 365 (b) for a procurement unit other than an independent procurement unit, the chief
- 366 procurement officer or the chief procurement officer's designee who is an employee
- 367 of the division .
- 368 (59) "Public corporation" means the same as that term is defined in Section 63E-1-102.

- 369 (60) "Project entity" means the same as that term is defined in Section 11-13-103.
- 370 (61) "Public entity" means the state or any other government entity within the state that
371 expends public funds.
- 372 (62) "Public facility" means a building, structure, infrastructure, improvement, or other
373 facility of a public entity.
- 374 (63) "Public funds" means money, regardless of its source, including from the federal
375 government, that is owned or held by a procurement unit.
- 376 (64) "Public transit district" means a public transit district organized under Title 17B,
377 Chapter 2a, Part 8, Public Transit District Act.
- 378 (65) "Public-private partnership" means an arrangement or agreement, occurring on or after
379 January 1, 2017, between a procurement unit and one or more contractors to provide for
380 a public need through the development or operation of a project in which the contractor
381 or contractors share with the procurement unit the responsibility or risk of developing,
382 owning, maintaining, financing, or operating the project.
- 383 (66) "Qualified vendor" means a vendor who:
- 384 (a) is responsible; and
- 385 (b) submits a responsive statement of qualifications under Section 63G-6a-410 that
386 meets the minimum mandatory requirements, evaluation criteria, and any applicable
387 score thresholds set forth in the request for statement of qualifications.
- 388 (67) "Real property" means land and any building, fixture, improvement, appurtenance,
389 structure, or other development that is permanently affixed to land.
- 390 (68) "Request for information" means a nonbinding process through which a procurement
391 unit requests information relating to a procurement item.
- 392 (69) "Request for proposals" means a document used to solicit proposals to provide a
393 procurement item to a procurement unit, including all other documents that are attached
394 to that document or incorporated in that document by reference.
- 395 (70) "Request for proposals process" means the procurement process described in Part 7,
396 Request for Proposals.
- 397 (71) "Request for statement of qualifications" means a document used to solicit information
398 about the qualifications of a person interested in responding to a potential procurement,
399 including all other documents attached to that document or incorporated in that
400 document by reference.
- 401 (72) "Requirements contract" means a contract:
- 402 (a) under which a contractor agrees to provide a procurement unit's entire requirements

- 403 for certain procurement items at prices specified in the contract during the contract
404 period; and
- 405 (b) that:
- 406 (i) does not require a minimum purchase amount; or
407 (ii) provides a maximum purchase limit.
- 408 (73) "Responsible" means being capable, in all respects, of:
- 409 (a) meeting all the requirements of a solicitation; and
410 (b) fully performing all the requirements of the contract resulting from the solicitation,
411 including being financially solvent with sufficient financial resources to perform the
412 contract.
- 413 (74) "Responsive" means conforming in all material respects to the requirements of a
414 solicitation.
- 415 (75) "Rule" includes a policy or regulation adopted by the rulemaking authority, if adopting
416 a policy or regulation is the method the rulemaking authority uses to adopt provisions
417 that govern the applicable procurement unit.
- 418 (76) "Rulemaking authority" means:
- 419 (a) for a legislative procurement unit, the Legislative Management Committee;
420 (b) for a judicial procurement unit, the Judicial Council;
421 (c) (i) only to the extent of the procurement authority expressly granted to the
422 procurement unit by statute:
- 423 (A) for the facilities division, the facilities division;
424 (B) for the Office of the Attorney General, the attorney general;
425 (C) for the Department of Transportation created in Section 72-1-201, the
426 executive director of the Department of Transportation; and
427 (D) for any other executive branch department, division, office, or entity that has
428 statutory procurement authority outside this chapter, the governing authority of
429 the department, division, office, or entity; and
- 430 (ii) for each other executive branch procurement unit, the board;
- 431 (d) for a local government procurement unit:
- 432 (i) the governing body of the local government unit; or
433 (ii) an individual or body designated by the local government procurement unit;
- 434 (e) for a school district or a public school, the board, except to the extent of a school
435 district's own nonadministrative rules that do not conflict with the provisions of this
436 chapter;

- 437 (f) for a state institution of higher education, the Utah Board of Higher Education;
438 (g) for the State Board of Education or the Utah Schools for the Deaf and the Blind, the
439 State Board of Education;
- 440 (h) for a public transit district, the chief executive of the public transit district;
441 (i) for a special district other than a public transit district or for a special service district,
442 the board, except to the extent that the board of trustees of the special district or the
443 governing body of the special service district makes its own rules:
444 (i) with respect to a subject addressed by board rules; or
445 (ii) that are in addition to board rules;
- 446 (j) for the Utah Educational Savings Plan, created in Section 53B-8a-103, the Utah
447 Board of Higher Education;
- 448 (k) for the School and Institutional Trust Lands Administration, created in Section
449 53C-1-201, the School and Institutional Trust Lands Board of Trustees;
- 450 (l) for the School and Institutional Trust Fund Office, created in Section 53D-1-201, the
451 School and Institutional Trust Fund Board of Trustees;
- 452 (m) for the Utah Communications Authority, established in Section 63H-7a-201, the
453 Utah Communications Authority board, created in Section 63H-7a-203; or
- 454 (n) for any other procurement unit, the board.
- 455 (77) "Service":
456 (a) means labor, effort, or work to produce a result that is beneficial to a procurement
457 unit;
458 (b) includes a professional service; and
459 (c) does not include labor, effort, or work provided under an employment agreement or a
460 collective bargaining agreement.
- 461 (78) "Small purchase process" means the procurement process described in Section
462 63G-6a-506.
- 463 (79) "Sole source contract" means a contract resulting from a sole source procurement.
- 464 (80) "Sole source procurement" means a procurement without competition pursuant to a
465 determination under Subsection 63G-6a-802(1)(a) that there is only one source for the
466 procurement item.
- 467 (81) "Solicitation" means an invitation for bids, request for proposals, or request for
468 statement of qualifications.
- 469 (82) "Solicitation response" means:
470 (a) a bid submitted in response to an invitation for bids;

- 471 (b) a proposal submitted in response to a request for proposals; or
472 (c) a statement of qualifications submitted in response to a request for statement of
473 qualifications.
- 474 (83) "Special district" means the same as that term is defined in Section 17B-1-102.
- 475 (84) "Special service district" means the same as that term is defined in Section 17D-1-102.
- 476 (85) "Specification" means any description of the physical or functional characteristics or of
477 the nature of a procurement item included in an invitation for bids or a request for
478 proposals, or otherwise specified or agreed to by a procurement unit, including a
479 description of:
- 480 (a) a requirement for inspecting or testing a procurement item; or
481 (b) preparing a procurement item for delivery.
- 482 (86) "Standard procurement process" means:
- 483 (a) the bidding process;
484 (b) the request for proposals process;
485 (c) the approved vendor list process;
486 (d) the small purchase process; or
487 (e) the design professional procurement process.
- 488 (87) "State cooperative contract" means a contract awarded by the division for and in behalf
489 of all public entities.
- 490 (88) "Statement of qualifications" means a written statement submitted to a procurement
491 unit in response to a request for statement of qualifications.
- 492 (89) "Subcontractor":
- 493 (a) means a person under contract to perform part of a contractual obligation under the
494 control of the contractor, whether the person's contract is with the contractor directly
495 or with another person who is under contract to perform part of a contractual
496 obligation under the control of the contractor; and
497 (b) includes a supplier, distributor, or other vendor that furnishes supplies or services to
498 a contractor.
- 499 (90) "Technology" means the same as "information technology," as defined in Section
500 63A-16-102.
- 501 (91) "Tie bid" means that the lowest responsive bids of responsible bidders are identical in
502 price.
- 503 (92) "Time and materials contract" means a contract under which the contractor is paid:
504 (a) the actual cost of direct labor at specified hourly rates;

- 505 (b) the actual cost of materials and equipment usage; and
506 (c) an additional amount, expressly described in the contract, to cover overhead and
507 profit, that is not based on a percentage of the cost to the contractor.

508 (93) "Transitional costs":

509 (a) means the costs of changing:

- 510 (i) from an existing provider of a procurement item to another provider of that
511 procurement item; or
512 (ii) from an existing type of procurement item to another type;

513 (b) includes:

- 514 (i) training costs;
515 (ii) conversion costs;
516 (iii) compatibility costs;
517 (iv) costs associated with system downtime;
518 (v) disruption of service costs;
519 (vi) staff time necessary to implement the change;
520 (vii) installation costs; and
521 (viii) ancillary software, hardware, equipment, or construction costs; and

522 (c) does not include:

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

525 (94) "Vendor":

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

528 (b) includes:

- 529 (i) a bidder;
530 (ii) an offeror;
531 (iii) an approved vendor;
532 (iv) a design professional; and
533 (v) a person who submits an unsolicited proposal under Section 63G-6a-712.

534 Section 2. **Effective date.**

535 This bill takes effect on May 1, 2024.