

28 or repair of any public building or public work.

29 (b) "Construction" does not mean the routine operation, routine repair, or routine
30 maintenance of existing structures, buildings, or real property.

31 (5) (a) "Construction Manager/General Contractor" means any contractor who enters into
32 a contract for the management of a construction project when that contract allows the contractor
33 to subcontract for additional labor and materials that were not included in the contractor's cost
34 proposal submitted at the time of the procurement of the Construction Manager/General
35 Contractor's services.

36 (b) "Construction Manager/General Contractor" does not mean a contractor whose only
37 subcontract work not included in the contractor's cost proposal submitted as part of the
38 procurement of construction is to meet subcontracted portions of change orders approved within
39 the scope of the project.

40 (6) "Contract" means any state agreement for the procurement or disposal of supplies,
41 services, or construction.

42 (7) "Cooperative purchasing" means procurement conducted by, or on behalf of, more than
43 one public procurement unit, or by a public procurement unit with an external procurement unit.

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

47 (9) (a) "Design-build" means the procurement of architect-engineer services and
48 construction by the use of a single contract with the design-build provider.

49 (b) This method of design and construction can include the design-build provider
50 supplying the site as part of the contract.

51 (10) "Established catalogue price" means the price included in a catalogue, price list,
52 schedule, or other form that:

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

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

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

58 (11) "External procurement unit" means any buying organization not located in this state

59 which, if located in this state, would qualify as a public procurement unit. An agency of the United
60 States is an external procurement unit.

61 (12) "Grant" means the furnishing by the state or by any other public or private source
62 assistance, whether financial or otherwise, to any person to support a program authorized by law.
63 It does not include an award whose primary purpose is to procure an end product, whether in the
64 form of supplies, services, or construction. A contract resulting from the award is not a grant but
65 a procurement contract.

66 (13) "Invitation for bids" means all documents, whether attached or incorporated by
67 reference, utilized for soliciting bids.

68 (14) "Local public procurement unit" means any political subdivision or institution of
69 higher education of the state or public agency of any subdivision, public authority, educational,
70 health, or other institution, and to the extent provided by law, any other entity which expends
71 public funds for the procurement of supplies, services, and construction, but not counties,
72 municipalities, political subdivisions created by counties or municipalities under the Interlocal
73 Cooperation Act, the Utah Housing Finance Agency, the Utah Technology Finance Corporation,
74 or the Legislature and its staff offices. It includes two or more local public procurement units
75 acting under legislation which authorizes intergovernmental cooperation.

76 (15) "Person" means any business, individual, union, committee, club, other organization,
77 or group of individuals, not including a state agency or a local public procurement unit.

78 (16) "Policy board" means the procurement policy board created by Section 63-56-6.

79 (17) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference
80 under the requirements of this chapter.

81 (18) "Procurement" means buying, purchasing, renting, leasing, leasing with an option to
82 purchase, or otherwise acquiring any supplies, services, or construction. It also includes all
83 functions that pertain to the obtaining of any supply, service, or construction, including description
84 of requirements, selection, and solicitation of sources, preparation, and award of a contract, and
85 all phases of contract administration.

86 (19) "Procurement officer" means any person or board duly authorized to enter into and
87 administer contracts and make written determinations with respect thereto. It also includes an
88 authorized representative acting within the limits of authority.

89 (20) "Public procurement unit" means either a local public procurement unit or a state

90 public procurement unit.

91 (21) "Purchase description" means the words used in a solicitation to describe the supplies,
92 services, or construction to be purchased, and includes specifications attached to or made a part
93 of the solicitation.

94 (22) "Purchasing agency" means any state agency other than the Division of Purchasing
95 and General Services that is authorized by this chapter or its implementing regulations, or by
96 delegation from the chief procurement officer, to enter into contracts.

97 (23) "Request for proposals" means all documents, whether attached or incorporated by
98 reference, used for soliciting proposals.

99 (24) "Responsible bidder or offeror" means a person who has the capability in all respects
100 to perform fully the contract requirements and who has the integrity and reliability which will
101 assure good faith performance.

102 (25) "Responsive bidder" means a person who has submitted a bid which conforms in all
103 material respects to the invitation for bids.

104 (26) "Sealed" does not preclude acceptance of electronically sealed and submitted bids or
105 proposals in addition to bids or proposals manually sealed and submitted.

106 (27) "Services" means the furnishing of labor, time, or effort by a contractor, not involving
107 the delivery of a specific end product other than reports which are merely incidental to the required
108 performance. It does not include employment agreements or collective bargaining agreements.

109 (28) "Specification" means any description of the physical or functional characteristics,
110 or of the nature of a supply, service, or construction item. It may include a description of any
111 requirement for inspecting, testing, or preparing a supply, service, or construction item for
112 delivery.

113 (29) "State agency" or "the state" means any department, division, commission, council,
114 board, bureau, committee, institution, government corporation, or other establishment [or], official,
115 or employee of this state.

116 (30) "State public procurement unit" means the Division of Purchasing and General
117 Services and any other purchasing agency of this state.

118 (31) "Supplies" means all property, including equipment, materials, and printing.

119 (32) "Using agency" means any state agency which utilizes any supplies, services, or
120 construction procured under this chapter.

121 Section 2. Section **63-56-47** is amended to read:

122 **63-56-47. Costs to or against protestor.**

123 (1) When a protest is sustained administratively or upon administrative or judicial review
124 and the protesting bidder or offeror should have been awarded the contract under the solicitation
125 but is not, the protestor~~[-in addition to any other relief,]~~ shall be entitled~~[-]~~ to the following relief
126 as a claim against the state~~[-to]~~:

127 (a) the reasonable costs incurred in connection with the solicitation, including bid
128 preparation and appeal costs~~[-]~~; and

129 (b) any equitable relief determined to be appropriate by the reviewing administrative or
130 judicial body.

131 (2) When a protest is not sustained by the Procurement Appeals Board, the protestor shall
132 reimburse the Division of Purchasing and General Services for the per diem and expenses paid by
133 the division to witnesses or appeals board members and any additional expenses incurred by the
134 state agency staff who have provided materials and administrative services to the board for that
135 case.

136 Section 3. Section **63-56-59** is amended to read:

137 **63-56-59. Jurisdiction of district court.**

138 (1) The district court shall have jurisdiction over an action, whether the action is at law or
139 in equity, between the state and:

140 (a) a bidder, offeror, or contractor, prospective or actual, who is aggrieved in connection
141 with the solicitation or award of a contract;

142 (b) a person who is subject to a suspension or debarment proceeding; and

143 (c) a contractor, for any cause of action which arises under, or by virtue of a contract.

144 (2) The provisions of Sections ~~[63-30-2 through]~~ 63-30-11, 63-30-12, 63-30-14, 63-30-15,
145 and 63-30-19 [shall] do not apply to actions brought under this chapter by an aggrieved party for
146 equitable relief or reasonable costs incurred in preparing or appealing an unsuccessful bid or offer.

Legislative Review Note
as of 12-19-01 9:05 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel