

**PROCUREMENT CHANGES**

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Keven J. Stratton**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies the Utah Procurement Code.

**Highlighted Provisions:**

This bill:

▶ includes grants over a specified dollar amount in the definition of a "procurement" that is subject to the procurement code.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**63G-6a-103**, as last amended by Laws of Utah 2014, Chapter 196

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

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

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

As used in this chapter:

(1) "Architect-engineer services" means:

(a) professional services within the scope of the practice of architecture as defined in



28 Section 58-3a-102;

29 (b) professional engineering as defined in Section 58-22-102; or

30 (c) master planning and programming services.

31 (2) "Bidder" means a person who responds to an invitation for bids.

32 (3) "Change directive" means a written order signed by the procurement officer that  
33 directs the contractor to suspend work or make changes, as authorized by contract, without the  
34 consent of the contractor.

35 (4) "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 mutual  
37 agreement of the parties to the contract.

38 (5) "Chief procurement officer" means the chief procurement officer appointed under  
39 Subsection 63G-6a-302(1).

40 (6) "Conducting procurement unit" means a procurement unit that conducts all aspects  
41 of a procurement:

42 (a) except:

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

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

45 (b) including:

46 (i) preparing any solicitation document;

47 (ii) appointing an evaluation committee;

48 (iii) conducting the evaluation process, except as provided in Subsection  
49 63G-6a-707(5)(b) relating to scores calculated for costs of proposals;

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

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

53 (vi) administering a contract.

54 (7) (a) "Construction" means the process of building, renovating, altering, improving,  
55 or repairing a public building or public work.

56 (b) "Construction" does not include the routine operation, routine repair, or routine  
57 maintenance of an existing structure, building, or real property.

58 (8) (a) "Construction manager/general contractor" means a contractor who enters into a

59 contract for the management of a construction project when the contract allows the contractor  
60 to subcontract for additional labor and materials that are not included in the contractor's cost  
61 proposal submitted at the time of the procurement of the contractor's services.

62 (b) "Construction manager/general contractor" does not include a contractor whose  
63 only subcontract work not included in the contractor's cost proposal submitted as part of the  
64 procurement of the contractor's services is to meet subcontracted portions of change orders  
65 approved within the scope of the project.

66 (9) "Contract" means an agreement for the procurement or disposal of a procurement  
67 item.

68 (10) "Contractor" means a person who is awarded a contract with a procurement unit.

69 (11) "Cooperative procurement" means procurement conducted by, or on behalf of:

70 (a) more than one procurement unit; or

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

72 (12) "Cost-plus-a-percentage-of-cost contract" means a contract where the contractor is  
73 paid a percentage over and above the contractor's actual expenses or costs.

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

77 (14) "Days" means calendar days, unless expressly provided otherwise.

78 (15) "Definite quantity contract" means a fixed price contract that provides for the  
79 supply of a specified amount of goods over a specified period, with deliveries scheduled  
80 according to a specified schedule.

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

83 (17) "Director" means the director of the division.

84 (18) "Established catalogue price" means the price included in a catalogue, price list,  
85 schedule, or other form that:

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

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

88 (c) states prices at which sales are currently or were last made to a significant number  
89 of any category of buyers or buyers constituting the general buying public for the supplies or

90 services involved.

91 (19) "Fixed price contract" means a contract that provides a price, for each  
92 procurement item obtained under the contract, that is not subject to adjustment except to the  
93 extent that:

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

96 (b) an adjustment is required by law.

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

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

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

102 (21) (a) "Grant" means furnishing, by a public entity or by any other public or private  
103 source, financial or other assistance to a person to support a program authorized by law.

104 (b) "Grant" does not include:

105 (i) an award whose primary purpose is to procure an end product or procurement item;

106 or

107 (ii) a contract that is awarded as a result of a procurement or a procurement process.

108 (22) "Head of a procurement unit" means:

109 (a) as it relates to a legislative procurement unit, any person designated by rule made  
110 by the applicable rulemaking authority;

111 (b) as it relates to an executive branch procurement unit:

112 (i) the director of a division; or

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

114 (c) as it relates to a judicial procurement unit:

115 (i) the Judicial Council; or

116 (ii) any other person designated by the Judicial Council, by rule;

117 (d) as it relates to a local government procurement unit:

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

119 (ii) any other person designated by the local government procurement unit;

120 (e) as it relates to a local district, the board of trustees of the local district or a designee

121 of the board of trustees;

122 (f) as it relates to a special service district, the governing body of the special service  
123 district or a designee of the governing body;

124 (g) as it relates to a local building authority, the board of directors of the local building  
125 authority or a designee of the board of directors;

126 (h) as it relates to a conservation district, the board of supervisors of the conservation  
127 district or a designee of the board of supervisors;

128 (i) as it relates to a public corporation, the board of directors of the public corporation  
129 or a designee of the board of directors;

130 (j) as it relates to a school district or any school or entity within a school district, the  
131 board of the school district, or the board's designee;

132 (k) as it relates to a charter school, the individual or body with executive authority over  
133 the charter school, or the individual's or body's designee;

134 (l) as it relates to an institution of higher education of the state, the president of the  
135 institution of higher education, or the president's designee; or

136 (m) as it relates to a public transit district, the board of trustees or a designee of the  
137 board of trustees.

138 (23) "Indefinite quantity contract" means a fixed price contract that:

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

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

142 (ii) provides a maximum purchase limit.

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

145 (25) "Invitation for bids" includes all documents, including documents that are attached  
146 or incorporated by reference, used for soliciting bids to provide a procurement item to a  
147 procurement unit.

148 (26) "Issuing procurement unit" means a procurement unit that:

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

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

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

- 152 (27) "Labor hour contract" is a contract where:
- 153 (a) the supplies and materials are not provided by, or through, the contractor; and
- 154 (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and
- 155 profit for a specified number of labor hours or days.
- 156 (28) "Multiple award contracts" means the award of a contract for an indefinite
- 157 quantity of a procurement item to more than one bidder or offeror.
- 158 (29) "Multiyear contract" means a contract that extends beyond a one-year period,
- 159 including a contract that permits renewal of the contract, without competition, beyond the first
- 160 year of the contract.
- 161 (30) "Municipality" means a city or a town.
- 162 (31) "Offeror" means a person who responds to a request for proposals.
- 163 (32) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference
- 164 under the requirements of this chapter.
- 165 (33) (a) "Procure" or "procurement" means buying, purchasing, renting, leasing, leasing
- 166 with an option to purchase, or otherwise acquiring a procurement item.
- 167 (b) "Procure" or "procurement" includes all functions that pertain to the obtaining of a
- 168 procurement item, including:
- 169 (i) the description of requirements;
- 170 (ii) the selection process;
- 171 (iii) solicitation of sources;
- 172 (iv) the preparation for soliciting a procurement item; and
- 173 (v) the award of a contract.
- 174 (c) "Procurement" includes a grant in excess of \$500,000.
- 175 (34) "Procurement item" means a supply, a service, construction, or technology.
- 176 (35) "Procurement officer" means:
- 177 (a) as it relates to a procurement unit with independent procurement authority:
- 178 (i) the head of the procurement unit;
- 179 (ii) a designee of the head of the procurement unit; or
- 180 (iii) a person designated by rule made by the applicable rulemaking authority; or
- 181 (b) as it relates to the division or a procurement unit without independent procurement
- 182 authority, the chief procurement officer.

183 (36) "Professional service" means a service that requires a high degree of specialized  
184 knowledge and discretion in the performance of the service, including:

- 185 (a) legal services;
- 186 (b) consultation services;
- 187 (c) architectural services;
- 188 (d) engineering;
- 189 (e) design;
- 190 (f) underwriting;
- 191 (g) bond counsel;
- 192 (h) financial advice;
- 193 (i) construction management;
- 194 (j) medical services;
- 195 (k) psychiatric services; or
- 196 (l) counseling services.

197 (37) "Protest officer" means:

198 (a) as it relates to the division or a procurement unit with independent procurement  
199 authority:

- 200 (i) the head of the procurement unit;
- 201 (ii) a designee of the head of the procurement unit; or
- 202 (iii) a person designated by rule made by the applicable rulemaking authority; or

203 (b) as it relates to a procurement unit without independent procurement authority, the  
204 chief procurement officer or the chief procurement officer's designee.

205 (38) "Request for information" means a nonbinding process where a procurement unit  
206 requests information relating to a procurement item.

207 (39) "Request for proposals" includes all documents, including documents that are  
208 attached or incorporated by reference, used for soliciting proposals to provide a procurement  
209 item to a procurement unit.

210 (40) "Request for statement of qualifications" means all documents used to solicit  
211 information about the qualifications of the person interested in responding to a potential  
212 procurement, including documents attached or incorporated by reference.

213 (41) "Requirements contract" means a contract:

214 (a) where a contractor agrees to provide a procurement unit's entire requirements for  
215 certain procurement items at prices specified in the contract during the contract period; and

216 (b) that:

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

218 (ii) provides a maximum purchase limit.

219 (42) "Responsible" means being capable, in all respects, of:

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

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

223 (43) "Responsive" means conforming in all material respects to the invitation for bids  
224 or request for proposals.

225 (44) "Sealed" means manually or electronically sealed and submitted bids or proposals.

226 (45) (a) "Services" means the furnishing of labor, time, or effort by a contractor, not  
227 involving the delivery of a specific end product other than a report that is incidental to the  
228 required performance.

229 (b) "Services" does not include an employment agreement or a collective bargaining  
230 agreement.

231 (46) "Sole source contract" means a contract resulting from a sole source procurement.

232 (47) "Sole source procurement" means a procurement without competition pursuant to  
233 a determination under Subsection [63G-6a-802\(2\)\(a\)](#) that there is only one source for the  
234 procurement item.

235 (48) "Solicitation" means an invitation for bids, request for proposals, notice of a sole  
236 source procurement, request for statement of qualifications, request for information, or any  
237 document used to obtain bids, proposals, pricing, qualifications, or information for the purpose  
238 of entering into a procurement contract.

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

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

243 (b) preparing a procurement item for delivery.

244 (50) "Standard procurement process" means one of the following methods of obtaining



- 245 a procurement item:
- 246 (a) bidding, as described in Part 6, Bidding;
  - 247 (b) request for proposals, as described in Part 7, Request for Proposals; or
  - 248 (c) small purchases, in accordance with the requirements established under Section
  - 249 [63G-6a-408](#).
- 250 (51) "State cooperative contract" means a contract awarded by the division for and in
- 251 behalf of all public entities.
- 252 (52) "Statement of qualifications" means a written statement submitted to a
- 253 procurement unit in response to a request for statement of qualifications.
- 254 (53) (a) "Subcontractor" means a person under contract with a contractor or another
- 255 subcontractor to provide services or labor for design or construction.
- 256 (b) "Subcontractor" includes a trade contractor or specialty contractor.
- 257 (c) "Subcontractor" does not include a supplier who provides only materials,
- 258 equipment, or supplies to a contractor or subcontractor.
- 259 (54) "Supplies" means all property, including equipment, materials, and printing.
- 260 (55) "Tie bid" means that the lowest responsive and responsible bids are identical in
- 261 price.
- 262 (56) "Time and materials contract" means a contract where the contractor is paid:
- 263 (a) the actual cost of direct labor at specified hourly rates;
  - 264 (b) the actual cost of materials and equipment usage; and
  - 265 (c) an additional amount, expressly described in the contract, to cover overhead and
  - 266 profit, that is not based on a percentage of the cost to the contractor.

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**Legislative Review Note**  
as of 2-9-15 9:51 AM

**Office of Legislative Research and General Counsel**