

Representative Jordan D. Teuscher proposes the following substitute bill:

EDUCATION PROCUREMENT AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jordan D. Teuscher

Senate Sponsor: Michael K. McKell

LONG TITLE

General Description:

This bill makes changes to procurement provisions for the public education system.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ makes changes to procurement provisions for school districts, public schools, and the State Board of Education; and
- ▶ makes technical and conforming changes.

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 2022, Chapters 421, 422

63G-6a-106, as last amended by Laws of Utah 2021, Chapter 344

63G-6a-2105, as last amended by Laws of Utah 2016, Chapters 348, 355



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

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

28 **63G-6a-103. Definitions.**

29 As used in this chapter:

30 (1) "Approved vendor" means a person who has been approved for inclusion on an
31 approved vendor list through the approved vendor list process.

32 (2) "Approved vendor list" means a list of approved vendors established under Section
33 [63G-6a-507](#).

34 (3) "Approved vendor list process" means the procurement process described in
35 Section [63G-6a-507](#).

36 (4) "Bidder" means a person who submits a bid or price quote in response to an
37 invitation for bids.

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

39 (6) "Board" means the Utah State Procurement Policy Board, created in Section
40 [63G-6a-202](#).

41 (7) "Change directive" means a written order signed by the procurement officer that
42 directs the contractor to suspend work or make changes, as authorized by contract, without the
43 consent of the contractor.

44 (8) "Change order" means a written alteration in specifications, delivery point, rate of
45 delivery, period of performance, price, quantity, or other provisions of a contract, upon mutual
46 agreement of the parties to the contract.

47 (9) "Chief procurement officer" means the individual appointed under Section
48 [63A-2-102](#).

49 (10) "Conducting procurement unit" means a procurement unit that conducts all
50 aspects of a procurement:

51 (a) except:

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

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

54 (b) including:

55 (i) preparing any solicitation document;

56 (ii) appointing an evaluation committee;

57 (iii) conducting the evaluation process, except the process relating to scores calculated
58 for costs of proposals;

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

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

62 (vi) contract administration.

63 (11) "Conservation district" means the same as that term is defined in Section
64 [17D-3-102](#).

65 (12) "Construction project":

66 (a) means a project for the construction, renovation, alteration, improvement, or repair
67 of a public facility on real property, including all services, labor, supplies, and materials for the
68 project; and

69 (b) does not include services and supplies for the routine, day-to-day operation, repair,
70 or maintenance of an existing public facility.

71 (13) "Construction manager/general contractor":

72 (a) means a contractor who enters into a contract:

73 (i) for the management of a construction project; and

74 (ii) that allows the contractor to subcontract for additional labor and materials that are
75 not included in the contractor's cost proposal submitted at the time of the procurement of the
76 contractor's services; and

77 (b) does not include a contractor whose only subcontract work not included in the
78 contractor's cost proposal submitted as part of the procurement of the contractor's services is to
79 meet subcontracted portions of change orders approved within the scope of the project.

80 (14) "Construction subcontractor":

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

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

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

87 (15) "Contract" means an agreement for a procurement.

88 (16) "Contract administration" means all functions, duties, and responsibilities
89 associated with managing, overseeing, and carrying out a contract between a procurement unit
90 and a contractor, including:

- 91 (a) implementing the contract;
- 92 (b) ensuring compliance with the contract terms and conditions by the conducting
93 procurement unit and the contractor;
- 94 (c) executing change orders;
- 95 (d) processing contract amendments;
- 96 (e) resolving, to the extent practicable, contract disputes;
- 97 (f) curing contract errors and deficiencies;
- 98 (g) terminating a contract;
- 99 (h) measuring or evaluating completed work and contractor performance;
- 100 (i) computing payments under the contract; and
- 101 (j) closing out a contract.

102 (17) "Contractor" means a person who is awarded a contract with a procurement unit.

103 (18) "Cooperative procurement" means procurement conducted by, or on behalf of:

- 104 (a) more than one procurement unit; or
- 105 (b) a procurement unit and a cooperative purchasing organization.

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

109 (20) "Cost-plus-a-percentage-of-cost contract" means a contract under which the
110 contractor is paid a percentage of the total actual expenses or costs in addition to the
111 contractor's actual expenses or costs.

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

115 (22) "Days" means calendar days, unless expressly provided otherwise.

116 (23) "Definite quantity contract" means a fixed price contract that provides for a
117 specified amount of supplies over a specified period, with deliveries scheduled according to a
118 specified schedule.

- 119 (24) "Design professional" means:
- 120 (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects
- 121 Licensing Act;
- 122 (b) an individual licensed as a professional engineer or professional land surveyor
- 123 under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing
- 124 Act; or
- 125 (c) an individual certified as a commercial interior designer under Title 58, Chapter 86,
- 126 State Certification of Commercial Interior Designers Act.
- 127 (25) "Design professional procurement process" means the procurement process
- 128 described in Part 15, Design Professional Services.
- 129 (26) "Design professional services" means:
- 130 (a) professional services within the scope of the practice of architecture as defined in
- 131 Section [58-3a-102](#);
- 132 (b) professional engineering as defined in Section [58-22-102](#);
- 133 (c) master planning and programming services; or
- 134 (d) services within the scope of the practice of commercial interior design, as defined
- 135 in Section [58-86-102](#).
- 136 (27) "Design-build" means the procurement of design professional services and
- 137 construction by the use of a single contract.
- 138 (28) "Division" means the Division of Purchasing and General Services, created in
- 139 Section [63A-2-101](#).
- 140 (29) "Educational procurement unit" means:
- 141 (a) a school district;
- 142 (b) a public school, including a local school board or a charter school;
- 143 (c) the Utah Schools for the Deaf and the Blind;
- 144 (d) the Utah Education and Telehealth Network;
- 145 (e) an institution of higher education of the state described in Section [53B-1-102](#); or
- 146 (f) the State Board of Education.
- 147 (30) "Established catalogue price" means the price included in a catalogue, price list,
- 148 schedule, or other form that:
- 149 (a) is regularly maintained by a manufacturer or contractor;

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

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

154 (31) (a) "Executive branch procurement unit" means a department, division, office,
155 bureau, agency, or other organization within the state executive branch.

156 (b) "Executive branch procurement unit" does not include the Colorado River
157 Authority of Utah as provided in Section [63M-14-210](#).

158 (32) "Facilities division" means the Division of Facilities Construction and
159 Management, created in Section [63A-5b-301](#).

160 (33) "Fixed price contract" means a contract that provides a price, for each
161 procurement item obtained under the contract, that is not subject to adjustment except to the
162 extent that:

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

165 (b) an adjustment is required by law.

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

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

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

171 (35) "Grant" means an expenditure of public funds or other assistance, or an agreement
172 to expend public funds or other assistance, for a public purpose authorized by law, without
173 acquiring a procurement item in exchange.

174 (36) "Immaterial error":

175 (a) means an irregularity or abnormality that is:

176 (i) a matter of form that does not affect substance; or

177 (ii) an inconsequential variation from a requirement of a solicitation that has no, little,
178 or a trivial effect on the procurement process and that is not prejudicial to other vendors; and

179 (b) includes:

180 (i) a missing signature, missing acknowledgment of an addendum, or missing copy of a

- 181 professional license, bond, or insurance certificate;
- 182 (ii) a typographical error;
- 183 (iii) an error resulting from an inaccuracy or omission in the solicitation; and
- 184 (iv) any other error that the procurement official reasonably considers to be immaterial.
- 185 (37) "Indefinite quantity contract" means a fixed price contract that:
- 186 (a) is for an indefinite amount of procurement items to be supplied as ordered by a
- 187 procurement unit; and
- 188 (b) (i) does not require a minimum purchase amount; or
- 189 (ii) provides a maximum purchase limit.
- 190 (38) "Independent procurement unit" means:
- 191 (a) (i) a legislative procurement unit;
- 192 (ii) a judicial branch procurement unit;
- 193 (iii) an educational procurement unit;
- 194 (iv) a local government procurement unit;
- 195 (v) a conservation district;
- 196 (vi) a local building authority;
- 197 (vii) a local district;
- 198 (viii) a public corporation;
- 199 (ix) a special service district; or
- 200 (x) the Utah Communications Authority, established in Section [63H-7a-201](#);
- 201 (b) the facilities division, but only to the extent of the procurement authority provided
- 202 under Title 63A, Chapter 5b, Administration of State Facilities;
- 203 (c) the attorney general, but only to the extent of the procurement authority provided
- 204 under Title 67, Chapter 5, Attorney General;
- 205 (d) the Department of Transportation, but only to the extent of the procurement
- 206 authority provided under Title 72, Transportation Code; or
- 207 (e) any other executive branch department, division, office, or entity that has statutory
- 208 procurement authority outside this chapter, but only to the extent of that statutory procurement
- 209 authority.
- 210 (39) "Invitation for bids":
- 211 (a) means a document used to solicit:

212 (i) bids to provide a procurement item to a procurement unit; or
213 (ii) quotes for a price of a procurement item to be provided to a procurement unit; and
214 (b) includes all documents attached to or incorporated by reference in a document
215 described in Subsection (39)(a).

216 (40) "Issuing procurement unit" means a procurement unit that:

- 217 (a) reviews a solicitation to verify that it is in proper form;
- 218 (b) causes the notice of a solicitation to be published; and
- 219 (c) negotiates and approves the terms and conditions of a contract.

220 (41) "Judicial procurement unit" means:

- 221 (a) the Utah Supreme Court;
- 222 (b) the Utah Court of Appeals;
- 223 (c) the Judicial Council;
- 224 (d) a state judicial district; or
- 225 (e) an office, committee, subcommittee, or other organization within the state judicial
226 branch.

227 (42) "Labor hour contract" is a contract under which:

- 228 (a) the supplies and materials are not provided by, or through, the contractor; and
- 229 (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and
230 profit for a specified number of labor hours or days.

231 (43) "Legislative procurement unit" means:

- 232 (a) the Legislature;
- 233 (b) the Senate;
- 234 (c) the House of Representatives;
- 235 (d) a staff office of the Legislature, the Senate, or the House of Representatives; or
- 236 (e) a committee, subcommittee, commission, or other organization:
 - 237 (i) within the state legislative branch; or
 - 238 (ii) (A) that is created by statute to advise or make recommendations to the Legislature;
 - 239 (B) the membership of which includes legislators; and
 - 240 (C) for which the Office of Legislative Research and General Counsel provides staff
241 support.

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

243 17D-2-102.

244 (45) "Local district" means the same as that term is defined in Section 17B-1-102.

245 (46) "Local government procurement unit" means:

246 (a) a county, municipality, or project entity, and each office of the county, municipality,
247 or project entity, unless:

248 (i) the county or municipality adopts a procurement code by ordinance; or

249 (ii) the project entity adopts a procurement code through the process described in
250 Section 11-13-316;

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

253 (ii) a project entity that has adopted this entire chapter through the process described in
254 Subsection 11-13-316; or

255 (c) a county, municipality, or project entity, and each office of the county, municipality,
256 or project entity that has adopted a portion of this chapter to the extent that:

257 (i) a term in the ordinance is used in the adopted chapter; or

258 (ii) a term in the ordinance is used in the language a project entity adopts in its
259 procurement code through the process described in Section 11-13-316.

260 (47) "Multiple award contracts" means the award of a contract for an indefinite
261 quantity of a procurement item to more than one person.

262 (48) "Multiyear contract" means a contract that extends beyond a one-year period,
263 including a contract that permits renewal of the contract, without competition, beyond the first
264 year of the contract.

265 (49) "Municipality" means a city, town, or metro township.

266 (50) "Nonadopting local government procurement unit" means:

267 (a) a county or municipality that has not adopted Part 16, Protests, Part 17,
268 Procurement Appeals Board, Part 18, Appeals to Court and Court Proceedings, and Part 19,
269 General Provisions Related to Protest or Appeal; and

270 (b) each office or agency of a county or municipality described in Subsection (50)(a).

271 (51) "Offeror" means a person who submits a proposal in response to a request for
272 proposals.

273 (52) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference

274 under the requirements of this chapter.

275 (53) "Procure" means to acquire a procurement item through a procurement.

276 (54) "Procurement" means the acquisition of a procurement item through an
277 expenditure of public funds, or an agreement to expend public funds, including an acquisition
278 through a public-private partnership.

279 (55) "Procurement item" means an item of personal property, a technology, a service,
280 or a construction project.

281 (56) "Procurement official" means:

282 (a) for a procurement unit other than an independent procurement unit, the chief
283 procurement officer;

284 (b) for a legislative procurement unit, the individual, individuals, or body designated in
285 a policy adopted by the Legislative Management Committee;

286 (c) for a judicial procurement unit, the Judicial Council or an individual or body
287 designated by the Judicial Council by rule;

288 (d) for a local government procurement unit:

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

290 (ii) an individual or body designated by the local government procurement unit;

291 (e) for a local district, the board of trustees of the local district or the board of trustees'
292 designee;

293 (f) for a special service district, the governing body of the special service district or the
294 governing body's designee;

295 (g) for a local building authority, the board of directors of the local building authority
296 or the board of directors' designee;

297 (h) for a conservation district, the board of supervisors of the conservation district or
298 the board of supervisors' designee;

299 (i) for a public corporation, the board of directors of the public corporation or the board
300 of directors' designee;

301 (j) for a school district or any school or entity within a school district, the board of the
302 school district or the board's designee;

303 (k) for a charter school, the individual or body with executive authority over the charter
304 school or the designee of the individual or body;

305 (l) for an institution of higher education described in Section 53B-2-101, the president
306 of the institution of higher education or the president's designee;

307 (m) for the State Board of Education, the State Board of Education or the State Board
308 of Education's designee;

309 (n) for the Utah Board of Higher Education, the Commissioner of Higher Education or
310 the designee of the Commissioner of Higher Education;

311 (o) for the Utah Communications Authority, established in Section 63H-7a-201, the
312 executive director of the Utah Communications Authority or the executive director's designee;

313 or

314 (p) (i) for the facilities division, and only to the extent of procurement activities of the
315 facilities division as an independent procurement unit under the procurement authority
316 provided under Title 63A, Chapter 5b, Administration of State Facilities, the director of the
317 facilities division or the director's designee;

318 (ii) for the attorney general, and only to the extent of procurement activities of the
319 attorney general as an independent procurement unit under the procurement authority provided
320 under Title 67, Chapter 5, Attorney General, the attorney general or the attorney general's
321 designee;

322 (iii) for the Department of Transportation created in Section 72-1-201, and only to the
323 extent of procurement activities of the Department of Transportation as an independent
324 procurement unit under the procurement authority provided under Title 72, Transportation
325 Code, the executive director of the Department of Transportation or the executive director's
326 designee; or

327 (iv) for any other executive branch department, division, office, or entity that has
328 statutory procurement authority outside this chapter, and only to the extent of the procurement
329 activities of the department, division, office, or entity as an independent procurement unit
330 under the procurement authority provided outside this chapter for the department, division,
331 office, or entity, the chief executive officer of the department, division, office, or entity or the
332 chief executive officer's designee.

333 (57) "Procurement unit":

334 (a) means:

335 (i) a legislative procurement unit;

- 336 (ii) an executive branch procurement unit;
- 337 (iii) a judicial procurement unit;
- 338 (iv) an educational procurement unit;
- 339 (v) the Utah Communications Authority, established in Section [63H-7a-201](#);
- 340 (vi) a local government procurement unit;
- 341 (vii) a local district;
- 342 (viii) a special service district;
- 343 (ix) a local building authority;
- 344 (x) a conservation district; and
- 345 (xi) a public corporation; and

346 (b) except for a project entity, to the extent that a project entity is subject to this chapter
347 as described in Section [11-13-316](#), does not include a political subdivision created under Title
348 11, Chapter 13, Interlocal Cooperation Act.

349 (58) "Professional service" means labor, effort, or work that requires specialized
350 knowledge, expertise, and discretion, including labor, effort, or work in the field of:

- 351 (a) accounting;
- 352 (b) administrative law judge service;
- 353 (c) architecture;
- 354 (d) construction design and management;
- 355 (e) engineering;
- 356 (f) financial services;
- 357 (g) information technology;
- 358 (h) the law;
- 359 (i) medicine;
- 360 (j) psychiatry; or
- 361 (k) underwriting.

362 (59) "Protest officer" means:

- 363 (a) for the division or an independent procurement unit:
 - 364 (i) the procurement official;
 - 365 (ii) the procurement official's designee who is an employee of the procurement unit; or
 - 366 (iii) a person designated by rule made by the rulemaking authority; or

367 (b) for a procurement unit other than an independent procurement unit, the chief
368 procurement officer or the chief procurement officer's designee who is an employee of the
369 division .

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

371 (61) "Project entity" means the same as that term is defined in Section [11-13-103](#).

372 (62) "Public entity" means the state or any other government entity within the state that
373 expends public funds.

374 (63) "Public facility" means a building, structure, infrastructure, improvement, or other
375 facility of a public entity.

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

378 (65) "Public transit district" means a public transit district organized under Title 17B,
379 Chapter 2a, Part 8, Public Transit District Act.

380 (66) "Public-private partnership" means an arrangement or agreement, occurring on or
381 after January 1, 2017, between a procurement unit and one or more contractors to provide for a
382 public need through the development or operation of a project in which the contractor or
383 contractors share with the procurement unit the responsibility or risk of developing, owning,
384 maintaining, financing, or operating the project.

385 (67) "Qualified vendor" means a vendor who:

386 (a) is responsible; and

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

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

392 (69) "Request for information" means a nonbinding process through which a
393 procurement unit requests information relating to a procurement item.

394 (70) "Request for proposals" means a document used to solicit proposals to provide a
395 procurement item to a procurement unit, including all other documents that are attached to that
396 document or incorporated in that document by reference.

397 (71) "Request for proposals process" means the procurement process described in Part

398 7, Request for Proposals.

399 (72) "Request for statement of qualifications" means a document used to solicit
400 information about the qualifications of a person interested in responding to a potential
401 procurement, including all other documents attached to that document or incorporated in that
402 document by reference.

403 (73) "Requirements contract" means a contract:

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

406 (b) that:

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

408 (ii) provides a maximum purchase limit.

409 (74) "Responsible" means being capable, in all respects, of:

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

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

413 (75) "Responsive" means conforming in all material respects to the requirements of a
414 solicitation.

415 (76) "Rule" includes a policy or regulation adopted by the rulemaking authority, if
416 adopting a policy or regulation is the method the rulemaking authority uses to adopt provisions
417 that govern the applicable procurement unit.

418 (77) "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 executive
426 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 the department,

429 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] charter school, the [board] State Board of

435 Education, except to the extent of a school district's or charter school's own nonadministrative

436 rules that do not conflict with the provisions of this chapter or administrative rules that the

437 State Board of Education enacts in accordance with Title 63G, Chapter 3, Utah Administrative

438 Rulemaking Act;

439 (f) for a state institution of higher education, the Utah Board of Higher Education;

440 (g) for the State Board of Education or the Utah Schools for the Deaf and the Blind, the

441 State Board of Education;

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

443 (i) for a local district other than a public transit district or for a special service district,

444 the board, except to the extent that the board of trustees of the local district or the governing

445 body of the special service district makes its own rules:

446 (i) with respect to a subject addressed by board rules; or

447 (ii) that are in addition to board rules;

448 (j) for the Utah Educational Savings Plan, created in Section [53B-8a-103](#), the Utah

449 Board of Higher Education;

450 (k) for the School and Institutional Trust Lands Administration, created in Section

451 [53C-1-201](#), the School and Institutional Trust Lands Board of Trustees;

452 (l) for the School and Institutional Trust Fund Office, created in Section [53D-1-201](#),

453 the School and Institutional Trust Fund Board of Trustees;

454 (m) for the Utah Communications Authority, established in Section [63H-7a-201](#), the

455 Utah Communications Authority board, created in Section [63H-7a-203](#); or

456 (n) for any other procurement unit, the board.

457 (78) "Service":

458 (a) means labor, effort, or work to produce a result that is beneficial to a procurement

459 unit;

460 (b) includes a professional service; and

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

463 (79) "Small purchase process" means the procurement process described in Section
464 [63G-6a-506](#).

465 (80) "Sole source contract" means a contract resulting from a sole source procurement.

466 (81) "Sole source procurement" means a procurement without competition pursuant to
467 a determination under Subsection [63G-6a-802\(1\)\(a\)](#) that there is only one source for the
468 procurement item.

469 (82) "Solicitation" means an invitation for bids, request for proposals, or request for
470 statement of qualifications.

471 (83) "Solicitation response" means:

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

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

474 (c) a statement of qualifications submitted in response to a request for statement of
475 qualifications.

476 (84) "Special service district" means the same as that term is defined in Section
477 [17D-1-102](#).

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

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

482 (b) preparing a procurement item for delivery.

483 (86) "Standard procurement process" means:

484 (a) the bidding process;

485 (b) the request for proposals process;

486 (c) the approved vendor list process;

487 (d) the small purchase process; or

488 (e) the design professional procurement process.

489 (87) "State cooperative contract" means a contract awarded by the division for and in
490 behalf of all public entities.

491 (88) "Statement of qualifications" means a written statement submitted to a
492 procurement unit in response to a request for statement of qualifications.

493 (89) "Subcontractor":

494 (a) means a person under contract to perform part of a contractual obligation under the
495 control of the contractor, whether the person's contract is with the contractor directly or with
496 another person who is under contract to perform part of a contractual obligation under the
497 control of the contractor; and

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

500 (90) "Technology" means the same as "information technology," as defined in Section
501 [63A-16-102](#).

502 (91) "Tie bid" means that the lowest responsive bids of responsible bidders are
503 identical in price.

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

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

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

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

509 (93) "Transitional costs":

510 (a) means the costs of changing:

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

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

514 (b) includes:

515 (i) training costs;

516 (ii) conversion costs;

517 (iii) compatibility costs;

518 (iv) costs associated with system downtime;

519 (v) disruption of service costs;

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

521 (vii) installation costs; and

522 (viii) ancillary software, hardware, equipment, or construction costs; and
523 (c) does not include:
524 (i) the costs of preparing for or engaging in a procurement process; or
525 (ii) contract negotiation or drafting costs.
526 (94) "Vendor":
527 (a) means a person who is seeking to enter into a contract with a procurement unit to
528 provide a procurement item; and

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

535 Section 2. Section **63G-6a-106** is amended to read:

536 **63G-6a-106. Independent procurement units.**

537 (1) An independent procurement unit may, without the supervision, interference,
538 oversight, control, or involvement of the division or the chief procurement officer, but in
539 accordance with the requirements of this chapter:

540 (a) engage in a standard procurement process;
541 (b) acquire a procurement item under an exception, as provided in this chapter, to the
542 requirement to use a standard procurement process; or
543 (c) otherwise engage in an act authorized or required by this chapter.

544 (2) Notwithstanding Subsection (1)[-]:

545 (a) an independent procurement unit may agree in writing with the division to extend
546 the authority of the division or the chief procurement officer to the procurement unit, as
547 provided in the agreement[-]; and

548 (b) an independent procurement unit that is a school district or charter school may
549 agree in writing with the State Board of Education to extend the authority of the State Board of
550 Education to the school district or charter school, as provided in the agreement.

551 (3) With respect to a procurement or contract over which an independent procurement
552 unit's procurement official has authority, the procurement official may:

- 553 (a) manage and supervise the procurement to ensure to the extent practicable that
554 taxpayers receive the best value;
- 555 (b) prepare and issue standard specifications for procurement items;
- 556 (c) review contracts, coordinate contract compliance, conduct contract audits, and
557 approve change orders;
- 558 (d) delegate duties and authority to an employee of the procurement unit, as the
559 independent procurement unit's procurement official considers appropriate;
- 560 (e) for the procurement official of an executive branch procurement unit that is an
561 independent procurement unit, coordinate with the Division of Technology Services, created in
562 Section [63A-16-103](#), with respect to the procurement unit's procurement of information
563 technology services;
- 564 (f) correct, amend, or cancel a procurement at any stage of the procurement process if
565 the procurement is out of compliance with this chapter or a rule adopted by the rulemaking
566 authority;
- 567 (g) attempt to resolve a contract dispute in coordination with the legal counsel of the
568 independent procurement unit; and
- 569 (h) at any time during the term of a contract awarded by the independent procurement
570 unit, correct or amend a contract to bring it into compliance or cancel the contract:
- 571 (i) if the procurement official determines that correcting, amending, or canceling the
572 contract is in the best interest of the procurement unit; and
- 573 (ii) after consulting with, as applicable, the attorney general's office or the procurement
574 unit's legal counsel.
- 575 (4) The attorney general may, in accordance with the provisions of this chapter, but
576 without involvement by the division or the chief procurement officer:
- 577 (a) retain outside counsel, subject to Section [67-5-33](#) if the attorney general retains
578 outside counsel under a contingent fee contract, as defined in that section; or
- 579 (b) procure litigation support services, including retaining an expert witness.
- 580 (5) An independent procurement unit that is not represented by the attorney general's
581 office may, in accordance with the provisions of this chapter, but without involvement by the
582 division or the chief procurement officer:
- 583 (a) retain outside counsel; or

584 (b) procure litigation support services, including retaining an expert witness.

585 (6) The state auditor's office may, in accordance with the provisions of this chapter, but
586 without involvement by the division or the chief procurement officer, procure audit services.

587 (7) The state treasurer may, in accordance with the provisions of this chapter, but
588 without involvement by the division or the chief procurement officer, procure:

589 (a) deposit services; and

590 (b) services related to issuing bonds.

591 Section 3. Section **63G-6a-2105** is amended to read:

592 **63G-6a-2105. Cooperative procurements -- Contracts with federal government --**
593 **Regional solicitations.**

594 (1) The chief procurement officer may, in accordance with the requirements of this
595 chapter, enter into a cooperative procurement, and a contract that is awarded as a result of a
596 cooperative procurement, with:

597 (a) another state;

598 (b) a cooperative purchasing organization; or

599 (c) a public entity inside or outside the state.

600 (2) A public entity, nonprofit organization, or, as permitted under federal law, an
601 agency of the federal government, may obtain a procurement item from a state cooperative
602 contract or a contract awarded by the chief procurement officer under Subsection (1), without
603 signing a participating addendum if the solicitation issued by the chief procurement officer to
604 obtain the contract includes a statement indicating that the resulting contract will be issued for
605 the benefit of public entities and, as applicable, nonprofit organizations and agencies of the
606 federal government.

607 (3) Except as provided in Section [63G-6a-506](#), or as otherwise provided in this chapter,
608 an executive branch procurement unit may not obtain a procurement item from a source other
609 than a state cooperative contract or a contract awarded by the chief procurement officer under
610 Subsection (1), if the procurement item is available under a state cooperative contract or a
611 contract awarded by the chief procurement officer under Subsection (1).

612 (4) A Utah procurement unit may:

613 (a) contract with the federal government without going through a standard procurement
614 process or an exception to a standard procurement process, described in Part 8, Exceptions to

615 Procurement Requirements, if the procurement item obtained under the contract is provided:

616 (i) directly by the federal government and not by a person contracting with the federal
617 government; or

618 (ii) by a person under contract with the federal government that obtained the contract in
619 a manner that substantially complies with the provisions of this chapter;

620 (b) participate in, sponsor, conduct, or administer a cooperative procurement with
621 another Utah procurement unit or another public entity in Utah, if:

622 (i) each party unit involved in the cooperative procurement enters into an agreement
623 describing the rights and duties of each party;

624 (ii) the procurement is conducted, and the contract awarded, in accordance with the
625 requirements of this chapter;

626 (iii) the solicitation:

627 (A) clearly indicates that the procurement is a cooperative procurement; and

628 (B) identifies each party that may purchase under the resulting contract; and

629 (iv) each party involved in the cooperative procurement signs a participating addendum
630 describing its rights and obligations in relation to the resulting contract; or

631 (c) purchase under, or otherwise participate in, an agreement or contract of a
632 cooperative purchasing organization, if:

633 (i) each party involved in the cooperative procurement enters into an agreement
634 describing the rights and duties of each party;

635 (ii) the procurement was conducted in accordance with the requirements of this
636 chapter;

637 (iii) the solicitation:

638 (A) clearly indicates that the procurement is a cooperative procurement; and

639 (B) identifies each party that may purchase under the resulting contract; and

640 (iv) each party involved in the cooperative procurement signs a participating addendum
641 describing its rights and obligations in relation to the resulting contract.

642 (5) A procurement unit may not obtain a procurement item under a contract that results
643 from a cooperative procurement described in Subsection (4), unless the procurement unit:

644 (a) is identified under Subsection (4)(b)(iii)(B) or (4)(c)(iii)(B); and

645 (b) signs a participating addendum to the contract as required by this section.

646 (6) A procurement unit, other than a legislative procurement unit or a judicial
647 procurement unit, may not obtain a procurement item under a contract held by the United
648 States General Services Administration, unless, based upon documentation provided by the
649 procurement unit, the Director of the State Division of Purchasing and General Services
650 determines in writing that the United States General Services Administration procured the
651 contract in a manner that substantially complies with the provisions of this chapter.

652 (7) (a) As used in this Subsection (7), "regional solicitation" means a solicitation issued
653 by the chief procurement officer for the procurement of a procurement item within a specified
654 geographical region of the state.

655 (b) In addition to any other duty or authority under this section, the chief procurement
656 officer shall:

657 (i) after considering board recommendations, develop a plan for issuing regional
658 solicitations; and

659 (ii) after developing a plan, issue regional solicitations for procurement items in
660 accordance with the plan and this chapter.

661 (c) A plan under Subsection (7)(b) shall:

662 (i) define the proposed regional boundaries for regional solicitations;

663 (ii) specify the types of procurement items for which a regional solicitation may be
664 issued; and

665 (iii) identify the regional solicitations that the chief procurement officer plans to issue.

666 (d) A regional solicitation shall require that a person responding to the solicitation offer
667 similar warranties and submit to similar obligations as are standard under other state
668 cooperative contracts.

669 (e) Except as authorized by the chief procurement officer, a procurement item that is
670 available under a state cooperative contract may not be provided under a contract pursuant to a
671 regional solicitation until after the expiration of the state cooperative contract.

672 (8) The State Board of Education may, in accordance with the requirements of this
673 chapter, enter into a cooperative procurement that is available to school districts and charter
674 schools if the contract is awarded as a result of a cooperative procurement.

675 (9) A school district or public school may obtain a procurement item from a
676 cooperative contract awarded by the State Board of Education under Subsection (8) without

677 signing a participating addendum if the solicitation issued by the State Board of Education to
678 obtain the contract includes a statement indicating that the resulting contract will be issued for
679 the benefit of school districts and charter schools.