

LIBRARY CONTRACT AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kathleen A. Riebe

House Sponsor: _____

LONG TITLE

General Description:

This bill addresses government contracts for electronic library materials.

Highlighted Provisions:

This bill:

- ▶ provides that when a procurement unit that operates a library enters a contract for electronic library materials, the contract may not contain certain specified provisions;
- ▶ provides that any prohibited provision is unenforceable; and
- ▶ makes technical 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-109, as last amended by Laws of Utah 2022, Chapter 421

63G-6a-303, as last amended by Laws of Utah 2022, Chapter 421

ENACTS:

63G-6a-1211, Utah Code Annotated 1953



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

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

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

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

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

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

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

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

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

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

(a) except:

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

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

(b) including:

(i) preparing any solicitation document;

- 59 (ii) appointing an evaluation committee;
- 60 (iii) conducting the evaluation process, except the process relating to scores calculated
- 61 for costs of proposals;
- 62 (iv) selecting and recommending the person to be awarded a contract;
- 63 (v) negotiating the terms and conditions of a contract, subject to the issuing
- 64 procurement unit's approval; and
- 65 (vi) contract administration.

66 (11) "Conservation district" means the same as that term is defined in Section
67 [17D-3-102](#).

68 (12) "Construction project":

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

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

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

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

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

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

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

83 (14) "Construction subcontractor":

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

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

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

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

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

94 (a) implementing the contract;

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

97 (c) executing change orders;

98 (d) processing contract amendments;

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

100 (f) curing contract errors and deficiencies;

101 (g) terminating a contract;

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

103 (i) computing payments under the contract; and

104 (j) closing out a contract.

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

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

107 (a) more than one procurement unit; or

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

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

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

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

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

119 (23) "Definite quantity contract" means a fixed price contract that provides for a
120 specified amount of supplies over a specified period, with deliveries scheduled according to a

121 specified schedule.

122 (24) "Design professional" means:

123 (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects
124 Licensing Act;

125 (b) an individual licensed as a professional engineer or professional land surveyor
126 under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing
127 Act; or

128 (c) an individual certified as a commercial interior designer under Title 58, Chapter 86,
129 State Certification of Commercial Interior Designers Act.

130 (25) "Design professional procurement process" means the procurement process
131 described in Part 15, Design Professional Services.

132 (26) "Design professional services" means:

133 (a) professional services within the scope of the practice of architecture as defined in
134 Section 58-3a-102;

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

136 (c) master planning and programming services; or

137 (d) services within the scope of the practice of commercial interior design, as defined
138 in Section 58-86-102.

139 (27) "Design-build" means the procurement of design professional services and
140 construction by the use of a single contract.

141 (28) "Division" means the Division of Purchasing and General Services, created in
142 Section 63A-2-101.

143 (29) "Educational procurement unit" means:

144 (a) a school district;

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

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

147 (d) the Utah Education and Telehealth Network;

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

149 (f) the State Board of Education.

150 (30) "Electronic library materials" means an audiobook, e-book, digital textbook, or
151 any other digital material available in a library.

152 ~~[(30)]~~ (31) "Established catalogue price" means the price included in a catalogue, price
153 list, schedule, or other form that:

- 154 (a) is regularly maintained by a manufacturer or contractor;
- 155 (b) is published or otherwise available for inspection by customers; and
- 156 (c) states prices at which sales are currently or were last made to a significant number
157 of any category of buyers or buyers constituting the general buying public for the supplies or
158 services involved.

159 ~~[(31)]~~ (32) (a) "Executive branch procurement unit" means a department, division,
160 office, bureau, agency, or other organization within the state executive branch.

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

163 ~~[(32)]~~ (33) "Facilities division" means the Division of Facilities Construction and
164 Management, created in Section [63A-5b-301](#).

165 ~~[(33)]~~ (34) "Fixed price contract" means a contract that provides a price, for each
166 procurement item obtained under the contract, that is not subject to adjustment except to the
167 extent that:

- 168 (a) the contract provides, under circumstances specified in the contract, for an
169 adjustment in price that is not based on cost to the contractor; or
- 170 (b) an adjustment is required by law.

171 ~~[(34)]~~ (35) "Fixed price contract with price adjustment" means a fixed price contract
172 that provides for an upward or downward revision of price, precisely described in the contract,
173 that:

- 174 (a) is based on the consumer price index or another commercially acceptable index,
175 source, or formula; and
- 176 (b) is not based on a percentage of the cost to the contractor.

177 ~~[(35)]~~ (36) "Grant" means an expenditure of public funds or other assistance, or an
178 agreement to expend public funds or other assistance, for a public purpose authorized by law,
179 without acquiring a procurement item in exchange.

180 ~~[(36)]~~ (37) "Immaterial error":

- 181 (a) means an irregularity or abnormality that is:
182 (i) a matter of form that does not affect substance; or

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

185 (b) includes:

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

188 (ii) a typographical error;

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

190 (iv) any other error that the procurement official reasonably considers to be immaterial.

191 [~~37~~] (38) "Indefinite quantity contract" means a fixed price contract that:

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

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

195 (ii) provides a maximum purchase limit.

196 [~~38~~] (39) "Independent procurement unit" means:

197 (a) (i) a legislative procurement unit;

198 (ii) a judicial branch procurement unit;

199 (iii) an educational procurement unit;

200 (iv) a local government procurement unit;

201 (v) a conservation district;

202 (vi) a local building authority;

203 (vii) a local district;

204 (viii) a public corporation;

205 (ix) a special service district; or

206 (x) the Utah Communications Authority, established in Section [63H-7a-201](#);

207 (b) the facilities division, but only to the extent of the procurement authority provided
208 under Title 63A, Chapter 5b, Administration of State Facilities;

209 (c) the attorney general, but only to the extent of the procurement authority provided
210 under Title 67, Chapter 5, Attorney General;

211 (d) the Department of Transportation, but only to the extent of the procurement
212 authority provided under Title 72, Transportation Code; or

213 (e) any other executive branch department, division, office, or entity that has statutory

214 procurement authority outside this chapter, but only to the extent of that statutory procurement
215 authority.

216 ~~[(39)]~~ (40) "Invitation for bids":

217 (a) means a document used to solicit:

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

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

220 (b) includes all documents attached to or incorporated by reference in a document

221 described in Subsection ~~[(39)(a)]~~ (40)(a).

222 ~~[(40)]~~ (41) "Issuing procurement unit" means a procurement unit that:

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

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

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

226 ~~[(41)]~~ (42) "Judicial procurement unit" means:

227 (a) the Utah Supreme Court;

228 (b) the Utah Court of Appeals;

229 (c) the Judicial Council;

230 (d) a state judicial district; or

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

233 ~~[(42)]~~ (43) "Labor hour contract" is a contract under which:

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

235 (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and
236 profit for a specified number of labor hours or days.

237 ~~[(43)]~~ (44) "Legislative procurement unit" means:

238 (a) the Legislature;

239 (b) the Senate;

240 (c) the House of Representatives;

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

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

243 (i) within the state legislative branch; or

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

245 (B) the membership of which includes legislators; and
246 (C) for which the Office of Legislative Research and General Counsel provides staff
247 support.

248 [~~(44)~~] (45) "Local building authority" means the same as that term is defined in Section
249 17D-2-102.

250 [~~(45)~~] (46) "Local district" means the same as that term is defined in Section
251 17B-1-102.

252 [~~(46)~~] (47) "Local government procurement unit" means:
253 (a) a county, municipality, or project entity, and each office of the county, municipality,
254 or project entity, unless:
255 (i) the county or municipality adopts a procurement code by ordinance; or
256 (ii) the project entity adopts a procurement code through the process described in
257 Section 11-13-316;
258 (b) (i) a county or municipality that has adopted this entire chapter by ordinance, and
259 each office or agency of that county or municipality; and
260 (ii) a project entity that has adopted this entire chapter through the process described in
261 Subsection 11-13-316; or
262 (c) a county, municipality, or project entity, and each office of the county, municipality,
263 or project entity that has adopted a portion of this chapter to the extent that:
264 (i) a term in the ordinance is used in the adopted chapter; or
265 (ii) a term in the ordinance is used in the language a project entity adopts in its
266 procurement code through the process described in Section 11-13-316.

267 [~~(47)~~] (48) "Multiple award contracts" means the award of a contract for an indefinite
268 quantity of a procurement item to more than one person.

269 [~~(48)~~] (49) "Multiyear contract" means a contract that extends beyond a one-year
270 period, including a contract that permits renewal of the contract, without competition, beyond
271 the first year of the contract.

272 [~~(49)~~] (50) "Municipality" means a city, town, or metro township.

273 [~~(50)~~] (51) "Nonadopting local government procurement unit" means:
274 (a) a county or municipality that has not adopted Part 16, Protests, Part 17,
275 Procurement Appeals Board, Part 18, Appeals to Court and Court Proceedings, and Part 19,

276 General Provisions Related to Protest or Appeal; and

277 (b) each office or agency of a county or municipality described in Subsection [~~(50)~~(a)]
278 (51)(a).

279 [~~(51)~~] (52) "Offeror" means a person who submits a proposal in response to a request
280 for proposals.

281 [~~(52)~~] (53) "Preferred bidder" means a bidder that is entitled to receive a reciprocal
282 preference under the requirements of this chapter.

283 [~~(53)~~] (54) "Procure" means to acquire a procurement item through a procurement.

284 [~~(54)~~] (55) "Procurement" means the acquisition of a procurement item through an
285 expenditure of public funds, or an agreement to expend public funds, including an acquisition
286 through a public-private partnership.

287 [~~(55)~~] (56) "Procurement item" means an item of personal property, a technology, a
288 service, or a construction project.

289 [~~(56)~~] (57) "Procurement official" means:

290 (a) for a procurement unit other than an independent procurement unit, the chief
291 procurement officer;

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

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

296 (d) for a local government procurement unit:

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

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

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

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

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

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

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

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

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

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

315 (m) for the State Board of Education, the State Board of Education or the State Board
316 of Education's designee;

317 (n) for the Utah Board of Higher Education, the Commissioner of Higher Education or
318 the designee of the Commissioner of Higher Education;

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

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

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

330 (iii) for the Department of Transportation created in Section 72-1-201, and only to the
331 extent of procurement activities of the Department of Transportation as an independent
332 procurement unit under the procurement authority provided under Title 72, Transportation
333 Code, the executive director of the Department of Transportation or the executive director's
334 designee; or

335 (iv) for any other executive branch department, division, office, or entity that has
336 statutory procurement authority outside this chapter, and only to the extent of the procurement
337 activities of the department, division, office, or entity as an independent procurement unit

338 under the procurement authority provided outside this chapter for the department, division,
339 office, or entity, the chief executive officer of the department, division, office, or entity or the
340 chief executive officer's designee.

341 [~~57~~] (58) "Procurement unit":

342 (a) means:

343 (i) a legislative procurement unit;

344 (ii) an executive branch procurement unit;

345 (iii) a judicial procurement unit;

346 (iv) an educational procurement unit;

347 (v) the Utah Communications Authority, established in Section [63H-7a-201](#);

348 (vi) a local government procurement unit;

349 (vii) a local district;

350 (viii) a special service district;

351 (ix) a local building authority;

352 (x) a conservation district; and

353 (xi) a public corporation; and

354 (b) except for a project entity, to the extent that a project entity is subject to this chapter
355 as described in Section [11-13-316](#), does not include a political subdivision created under Title
356 11, Chapter 13, Interlocal Cooperation Act.

357 [~~58~~] (59) "Professional service" means labor, effort, or work that requires specialized
358 knowledge, expertise, and discretion, including labor, effort, or work in the field of:

359 (a) accounting;

360 (b) administrative law judge service;

361 (c) architecture;

362 (d) construction design and management;

363 (e) engineering;

364 (f) financial services;

365 (g) information technology;

366 (h) the law;

367 (i) medicine;

368 (j) psychiatry; or

369 (k) underwriting.

370 [~~(59)~~] (60) "Protest officer" means:

371 (a) for the division or an independent procurement unit:

372 (i) the procurement official;

373 (ii) the procurement official's designee who is an employee of the procurement unit; or

374 (iii) a person designated by rule made by the rulemaking authority; or

375 (b) for a procurement unit other than an independent procurement unit, the chief

376 procurement officer or the chief procurement officer's designee who is an employee of the

377 division .

378 [~~(60)~~] (61) "Public corporation" means the same as that term is defined in Section

379 [63E-1-102](#).

380 [~~(61)~~] (62) "Project entity" means the same as that term is defined in Section

381 [11-13-103](#).

382 [~~(62)~~] (63) "Public entity" means the state or any other government entity within the

383 state that expends public funds.

384 [~~(63)~~] (64) "Public facility" means a building, structure, infrastructure, improvement,

385 or other facility of a public entity.

386 [~~(64)~~] (65) "Public funds" means money, regardless of its source, including from the

387 federal government, that is owned or held by a procurement unit.

388 [~~(65)~~] (66) "Public transit district" means a public transit district organized under Title

389 17B, Chapter 2a, Part 8, Public Transit District Act.

390 [~~(66)~~] (67) "Public-private partnership" means an arrangement or agreement, occurring

391 on or after January 1, 2017, between a procurement unit and one or more contractors to provide

392 for a public need through the development or operation of a project in which the contractor or

393 contractors share with the procurement unit the responsibility or risk of developing, owning,

394 maintaining, financing, or operating the project.

395 [~~(67)~~] (68) "Qualified vendor" means a vendor who:

396 (a) is responsible; and

397 (b) submits a responsive statement of qualifications under Section [63G-6a-410](#) that

398 meets the minimum mandatory requirements, evaluation criteria, and any applicable score

399 thresholds set forth in the request for statement of qualifications.

400 [~~(68)~~] (69) "Real property" means land and any building, fixture, improvement,
401 appurtenance, structure, or other development that is permanently affixed to land.

402 [~~(69)~~] (70) "Request for information" means a nonbinding process through which a
403 procurement unit requests information relating to a procurement item.

404 [~~(70)~~] (71) "Request for proposals" means a document used to solicit proposals to
405 provide a procurement item to a procurement unit, including all other documents that are
406 attached to that document or incorporated in that document by reference.

407 [~~(71)~~] (72) "Request for proposals process" means the procurement process described
408 in Part 7, Request for Proposals.

409 [~~(72)~~] (73) "Request for statement of qualifications" means a document used to solicit
410 information about the qualifications of a person interested in responding to a potential
411 procurement, including all other documents attached to that document or incorporated in that
412 document by reference.

413 [~~(73)~~] (74) "Requirements contract" means a contract:

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

416 (b) that:

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

418 (ii) provides a maximum purchase limit.

419 [~~(74)~~] (75) "Responsible" means being capable, in all respects, of:

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

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

423 [~~(75)~~] (76) "Responsive" means conforming in all material respects to the requirements
424 of a solicitation.

425 [~~(76)~~] (77) "Rule" includes a policy or regulation adopted by the rulemaking authority,
426 if adopting a policy or regulation is the method the rulemaking authority uses to adopt
427 provisions that govern the applicable procurement unit.

428 [~~(77)~~] (78) "Rulemaking authority" means:

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

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

- 431 (c) (i) only to the extent of the procurement authority expressly granted to the
432 procurement unit by statute:
- 433 (A) for the facilities division, the facilities division;
 - 434 (B) for the Office of the Attorney General, the attorney general;
 - 435 (C) for the Department of Transportation created in Section 72-1-201, the executive
436 director of the Department of Transportation; and
 - 437 (D) for any other executive branch department, division, office, or entity that has
438 statutory procurement authority outside this chapter, the governing authority of the department,
439 division, office, or entity; and
- 440 (ii) for each other executive branch procurement unit, the board;
- 441 (d) for a local government procurement unit:
- 442 (i) the governing body of the local government unit; or
 - 443 (ii) an individual or body designated by the local government procurement unit;
- 444 (e) for a school district or a public school, the board, except to the extent of a school
445 district's own nonadministrative rules that do not conflict with the provisions of this chapter;
- 446 (f) for a state institution of higher education, the Utah Board of Higher Education;
- 447 (g) for the State Board of Education or the Utah Schools for the Deaf and the Blind, the
448 State Board of Education;
- 449 (h) for a public transit district, the chief executive of the public transit district;
- 450 (i) for a local district other than a public transit district or for a special service district,
451 the board, except to the extent that the board of trustees of the local district or the governing
452 body of the special service district makes its own rules:
- 453 (i) with respect to a subject addressed by board rules; or
 - 454 (ii) that are in addition to board rules;
- 455 (j) for the Utah Educational Savings Plan, created in Section 53B-8a-103, the Utah
456 Board of Higher Education;
- 457 (k) for the School and Institutional Trust Lands Administration, created in Section
458 53C-1-201, the School and Institutional Trust Lands Board of Trustees;
- 459 (l) for the School and Institutional Trust Fund Office, created in Section 53D-1-201,
460 the School and Institutional Trust Fund Board of Trustees;
- 461 (m) for the Utah Communications Authority, established in Section 63H-7a-201, the

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

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

464 ~~[(78)]~~ [\(79\)](#) "Service":

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

467 (b) includes a professional service; and

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

470 ~~[(79)]~~ [\(80\)](#) "Small purchase process" means the procurement process described in
471 Section [63G-6a-506](#).

472 ~~[(80)]~~ [\(81\)](#) "Sole source contract" means a contract resulting from a sole source
473 procurement.

474 ~~[(81)]~~ [\(82\)](#) "Sole source procurement" means a procurement without competition
475 pursuant to a determination under Subsection [63G-6a-802\(1\)\(a\)](#) that there is only one source
476 for the procurement item.

477 ~~[(82)]~~ [\(83\)](#) "Solicitation" means an invitation for bids, request for proposals, or request
478 for statement of qualifications.

479 ~~[(83)]~~ [\(84\)](#) "Solicitation response" means:

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

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

482 (c) a statement of qualifications submitted in response to a request for statement of
483 qualifications.

484 ~~[(84)]~~ [\(85\)](#) "Special service district" means the same as that term is defined in Section
485 [17D-1-102](#).

486 ~~[(85)]~~ [\(86\)](#) "Specification" means any description of the physical or functional
487 characteristics or of the nature of a procurement item included in an invitation for bids or a
488 request for proposals, or otherwise specified or agreed to by a procurement unit, including a
489 description of:

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

491 (b) preparing a procurement item for delivery.

492 ~~[(86)]~~ [\(87\)](#) "Standard procurement process" means:

- 493 (a) the bidding process;
494 (b) the request for proposals process;
495 (c) the approved vendor list process;
496 (d) the small purchase process; or
497 (e) the design professional procurement process.

498 ~~[(87)]~~ (88) "State cooperative contract" means a contract awarded by the division for
499 and in behalf of all public entities.

500 ~~[(88)]~~ (89) "Statement of qualifications" means a written statement submitted to a
501 procurement unit in response to a request for statement of qualifications.

502 ~~[(89)]~~ (90) "Subcontractor":

503 (a) means a person under contract to perform part of a contractual obligation under the
504 control of the contractor, whether the person's contract is with the contractor directly or with
505 another person who is under contract to perform part of a contractual obligation under the
506 control of the contractor; and

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

509 ~~[(90)]~~ (91) "Technology" means the same as "information technology," as defined in
510 Section [63A-16-102](#).

511 ~~[(91)]~~ (92) "Tie bid" means that the lowest responsive bids of responsible bidders are
512 identical in price.

513 ~~[(92)]~~ (93) "Time and materials contract" means a contract under which the contractor
514 is paid:

- 515 (a) the actual cost of direct labor at specified hourly rates;
516 (b) the actual cost of materials and equipment usage; and
517 (c) an additional amount, expressly described in the contract, to cover overhead and
518 profit, that is not based on a percentage of the cost to the contractor.

519 ~~[(93)]~~ (94) "Transitional costs":

520 (a) means the costs of changing:

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

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

- 524 (b) includes:
- 525 (i) training costs;
- 526 (ii) conversion costs;
- 527 (iii) compatibility costs;
- 528 (iv) costs associated with system downtime;
- 529 (v) disruption of service costs;
- 530 (vi) staff time necessary to implement the change;
- 531 (vii) installation costs; and
- 532 (viii) ancillary software, hardware, equipment, or construction costs; and
- 533 (c) does not include:
- 534 (i) the costs of preparing for or engaging in a procurement process; or
- 535 (ii) contract negotiation or drafting costs.

536 [(94)] (95) "Vendor":

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

- 539 (b) includes:
- 540 (i) a bidder;
- 541 (ii) an offeror;
- 542 (iii) an approved vendor;
- 543 (iv) a design professional; and
- 544 (v) a person who submits an unsolicited proposal under Section [63G-6a-712](#).

545 Section 2. Section **63G-6a-109** is amended to read:

546 **63G-6a-109. Issuing procurement unit and conducting procurement unit.**

547 (1) With respect to a procurement by an executive branch procurement unit, except for
548 a procurement by an executive branch procurement unit that, under Subsection
549 [\[63G-6a-103\(38\)\(b\)\] 63G-6a-103\(39\)\(b\)](#), (c), (d), or (e), is designated as an independent
550 procurement unit:

- 551 (a) the division is the issuing procurement unit; and
- 552 (b) the executive branch procurement unit is the conducting procurement unit and is
553 responsible to ensure that the procurement is conducted in compliance with this chapter.

554 (2) With respect to a procurement by any other procurement unit, the procurement unit

555 is both the issuing procurement unit and the conducting procurement unit.

556 (3) A conducting procurement unit is responsible for contract administration.

557 Section 3. Section **63G-6a-303** is amended to read:

558 **63G-6a-303. Role, duties, and authority of chief procurement officer.**

559 (1) The chief procurement officer:

560 (a) is the director of the division;

561 (b) serves as the central procurement officer of the state;

562 (c) serves as a voting member of the board; and

563 (d) serves as the protest officer for a protest relating to a procurement of an executive
564 branch procurement, except an executive branch procurement unit designated under Subsection

565 [~~63G-6a-103(38)(b)~~] 63G-6a-103(39)(b), (c), (d), or (e) as an independent procurement unit, or

566 a state cooperative contract procurement, unless the chief procurement officer designates

567 another to serve as protest officer, as authorized in this chapter.

568 (2) Except as otherwise provided in this chapter, the chief procurement officer shall:

569 (a) develop procurement policies and procedures supporting ethical procurement
570 practices, fair and open competition among vendors, and transparency within the state's
571 procurement process;

572 (b) administer the state's cooperative purchasing program, including state cooperative
573 contracts and associated administrative fees;

574 (c) enter into an agreement with a public entity for services provided by the division, if
575 the agreement is in the best interest of the state;

576 (d) ensure the division's compliance with any applicable law, rule, or policy, including
577 a law, rule, or policy applicable to the division's role as an issuing procurement unit or
578 conducting procurement unit, or as the state's central procurement organization;

579 (e) manage the division's electronic procurement system;

580 (f) oversee the recruitment, training, career development, certification requirements,
581 and performance evaluation of the division's procurement personnel;

582 (g) make procurement training available to procurement units and persons who do
583 business with procurement units;

584 (h) provide exemplary customer service and continually improve the division's
585 procurement operations;

586 (i) exercise all other authority, fulfill all other duties and responsibilities, and perform
587 all other functions authorized under this chapter; and

588 (j) ensure that any training described in this Subsection (2) complies with Title 63G,
589 Chapter 22, State Training and Certification Requirements.

590 (3) With respect to a procurement or contract over which the chief procurement officer
591 has authority under this chapter, the chief procurement officer, except as otherwise provided in
592 this chapter:

593 (a) shall:

594 (i) manage and supervise a procurement to ensure to the extent practicable that
595 taxpayers receive the best value;

596 (ii) prepare and issue standard specifications for procurement items;

597 (iii) review contracts, coordinate contract compliance, conduct contract audits, and
598 approve change orders;

599 (iv) in accordance with Section 63A-16-204, coordinate with the Division of
600 Technology Services, created in Section 63A-16-103, with respect to the procurement of
601 information technology services by an executive branch procurement unit;

602 (v) correct, amend, or cancel a procurement at any stage of the procurement process if
603 the procurement is out of compliance with this chapter or a board rule;

604 (vi) after consultation with the attorney general's office, correct, amend, or cancel a
605 contract at any time during the term of the contract if:

606 (A) the contract is out of compliance with this chapter or a board rule; and

607 (B) the chief procurement officer determines that correcting, amending, or canceling
608 the contract is in the best interest of the state; and

609 (vii) make a reasonable attempt to resolve a contract dispute, in coordination with the
610 attorney general's office; and

611 (b) may:

612 (i) delegate limited purchasing authority to a state agency, with appropriate oversight
613 and control to ensure compliance with this chapter;

614 (ii) delegate duties and authority to an employee of the division, as the chief
615 procurement officer considers appropriate;

616 (iii) negotiate and settle contract overcharges, undercharges, and claims, in accordance

617 with the law and after consultation with the attorney general's office;

618 (iv) authorize a procurement unit to make a procurement pursuant to a regional
619 solicitation, as defined in Subsection [63G-6a-2105\(7\)](#), even if the procurement item is also
620 offered under a state cooperative contract, if the chief procurement officer determines that the
621 procurement pursuant to a regional solicitation is in the best interest of the acquiring
622 procurement unit; and

623 (v) remove an individual from the procurement process or contract administration for:

624 (A) having a conflict of interest or the appearance of a conflict of interest with a person
625 responding to a solicitation or with a contractor;

626 (B) having a bias or the appearance of bias for or against a person responding to a
627 solicitation or for or against a contractor;

628 (C) making an inconsistent or unexplainable score for a solicitation response;

629 (D) having inappropriate contact or communication with a person responding to a
630 solicitation;

631 (E) socializing inappropriately with a person responding to a solicitation or with a
632 contractor;

633 (F) engaging in any other action or having any other association that causes the chief
634 procurement officer to conclude that the individual cannot fairly evaluate a solicitation
635 response or administer a contract; or

636 (G) any other violation of a law, rule, or policy.

637 (4) The chief procurement officer may not delegate to an individual outside the
638 division the chief procurement officer's authority over a procurement described in Subsection
639 (3)(a)(iv).

640 (5) The chief procurement officer has final authority to determine whether an executive
641 branch procurement unit's anticipated expenditure of public funds, anticipated agreement to
642 expend public funds, or provision of a benefit constitutes a procurement that is subject to this
643 chapter.

644 (6) Except as otherwise provided in this chapter, the chief procurement officer shall
645 review, monitor, and audit the procurement activities and delegated procurement authority of
646 an executive branch procurement unit, except to the extent that an executive branch
647 procurement unit is designated under Subsection [~~[63G-6a-103\(38\)\(b\)](#)~~] [63G-6a-103\(39\)\(b\)](#), (c),

648 (d), or (e) as an independent procurement unit, to ensure compliance with this chapter, rules
649 made by the applicable rulemaking authority, and division policies.

650 Section 4. Section **63G-6a-1211** is enacted to read:

651 **63G-6a-1211. Procurement of electronic library materials.**

652 (1) A procurement unit that operates a library may not enter into a contract for
653 electronic library materials if the contract:

654 (a) prohibits or restricts the procurement unit from licensing the procurement unit's
655 own materials;

656 (b) prohibits the procurement unit from loaning materials to a borrower;

657 (c) restricts a borrower from using technological protection measures when accessing
658 the electronic library materials;

659 (d) prevents the procurement unit from digitally displaying or reciting text from the
660 electronic library materials if allowed for a display or reciting of text in a library building;

661 (e) restricts the number of licenses the procurement unit may acquire after the
662 procurement unit makes the electronic library materials available to the public;

663 (f) requires the procurement unit to purchase a license for electronic library materials at
664 a higher price than the price available to the public;

665 (g) prohibits the procurement unit from setting the duration or frequency of an
666 electronic library materials loan; or

667 (h) prohibits the procurement unit from disclosing the terms of the contract to another
668 procurement unit.

669 (2) A contract provision that violates this section is unenforceable.