

1 **PROCUREMENT OF DESIGN PROFESSIONALS**

2 **AMENDMENTS**

3 2019 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Luz Escamilla**

6 House Sponsor: Mike Schultz

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies provisions of the Utah Procurement Code relating to design
11 professionals.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ includes commercial interior designers as design professionals, for purposes of the
15 Utah Procurement Code.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **63G-6a-103**, as last amended by Laws of Utah 2018, Second Special Session, Chapter
23 4

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

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

27 **63G-6a-103. Definitions.**

28 As used in this chapter:

29 (1) "Applicable rulemaking authority" means:

- 30 (a) for a legislative procurement unit, the Legislative Management Committee;
- 31 (b) for a judicial procurement unit, the Judicial Council;
- 32 (c) (i) only to the extent of the procurement authority expressly granted to the
- 33 procurement unit by statute:
 - 34 (A) for the building board or the Division of Facilities Construction and Management,
 - 35 created in Section 63A-5-201, the building board;
 - 36 (B) for the Office of the Attorney General, the attorney general; and
 - 37 (C) for the Department of Transportation created in Section 72-1-201, the executive
 - 38 director of the Department of Transportation; and
 - 39 (ii) for each other executive branch procurement unit, the board;
- 40 (d) for a local government procurement unit:
 - 41 (i) the legislative body of the local government procurement unit; or
 - 42 (ii) an individual or body designated by the legislative body of the local government
 - 43 procurement unit;
- 44 (e) for a school district or a public school, the board, except to the extent of a school
- 45 district's own nonadministrative rules that do not conflict with the provisions of this chapter;
- 46 (f) for a state institution of higher education described in:
 - 47 (i) Subsections 53B-1-102(1)(a) and (c), the State Board of Regents; or
 - 48 (ii) Subsection 53B-1-102(1)(b), the Utah System of Technical Colleges Board of
 - 49 Trustees;
- 50 (g) for the State Board of Education, the State Board of Education;
- 51 (h) for a public transit district, the chief executive of the public transit district;
- 52 (i) for a local district other than a public transit district or for a special service district:
 - 53 (i) before January 1, 2015, the board of trustees of the local district or the governing
 - 54 body of the special service district; or
 - 55 (ii) on or after January 1, 2015, the board, except to the extent that the board of trustees
 - 56 of the local district or the governing body of the special service district makes its own rules:
 - 57 (A) with respect to a subject addressed by board rules; or

- 58 (B) that are in addition to board rules;
- 59 (j) for the Utah Communications Authority, established in Section [63H-7a-201](#), the
- 60 Utah Communications Authority Board, created in Section [63H-7a-203](#); or
- 61 (k) for any other procurement unit, the board.
- 62 (2) "Approved vendor" means a person who has been approved for inclusion on an
- 63 approved vendor list through the approved vendor list process.
- 64 (3) "Approved vendor list" means a list of approved vendors established under Section
- 65 [63G-6a-507](#).
- 66 (4) "Approved vendor list process" means the procurement process described in
- 67 Section [63G-6a-507](#).
- 68 (5) "Bidder" means a person who submits a bid or price quote in response to an
- 69 invitation for bids.
- 70 (6) "Bidding process" means the procurement process described in Part 6, Bidding.
- 71 (7) "Board" means the Utah State Procurement Policy Board, created in Section
- 72 [63G-6a-202](#).
- 73 (8) "Building board" means the State Building Board, created in Section [63A-5-101](#).
- 74 (9) "Change directive" means a written order signed by the procurement officer that
- 75 directs the contractor to suspend work or make changes, as authorized by contract, without the
- 76 consent of the contractor.
- 77 (10) "Change order" means a written alteration in specifications, delivery point, rate of
- 78 delivery, period of performance, price, quantity, or other provisions of a contract, upon mutual
- 79 agreement of the parties to the contract.
- 80 (11) "Chief procurement officer" means the chief procurement officer appointed under
- 81 Subsection [63G-6a-302\(1\)](#).
- 82 (12) "Conducting procurement unit" means a procurement unit that conducts all
- 83 aspects of a procurement:
- 84 (a) except:
- 85 (i) reviewing a solicitation to verify that it is in proper form; and

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

87 (b) including:

88 (i) preparing any solicitation document;

89 (ii) appointing an evaluation committee;

90 (iii) conducting the evaluation process, except as provided in Subsection

91 [63G-6a-707\(6\)\(b\)](#) relating to scores calculated for costs of proposals;

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

93 (v) negotiating the terms and conditions of a contract, subject to the issuing

94 procurement unit's approval; and

95 (vi) contract administration.

96 (13) "Conservation district" means the same as that term is defined in Section

97 [17D-3-102](#).

98 (14) "Construction":

99 (a) means services, including work, and supplies for a project for the construction,
100 renovation, alteration, improvement, or repair of a public facility on real property; and

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

103 (15) "Construction manager/general contractor":

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

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

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

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

112 (16) "Construction subcontractor":

113 (a) means a person under contract with a contractor or another subcontractor to provide

114 services or labor for the design or construction of a construction project;

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

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

119 (17) "Contract" means an agreement for a procurement.

120 (18) "Contract administration" means all functions, duties, and responsibilities
121 associated with managing, overseeing, and carrying out a contract between a procurement unit
122 and a contractor, including:

123 (a) implementing the contract;

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

126 (c) executing change orders;

127 (d) processing contract amendments;

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

129 (f) curing contract errors and deficiencies;

130 (g) terminating a contract;

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

132 (i) computing payments under the contract; and

133 (j) closing out a contract.

134 (19) "Contractor" means a person who is awarded a contract with a procurement unit.

135 (20) "Cooperative procurement" means procurement conducted by, or on behalf of:

136 (a) more than one procurement unit; or

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

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

141 (22) "Cost-plus-a-percentage-of-cost contract" means a contract under which the

142 contractor is paid a percentage of the total actual expenses or costs in addition to the
143 contractor's actual expenses or costs.

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

147 (24) "Days" means calendar days, unless expressly provided otherwise.

148 (25) "Definite quantity contract" means a fixed price contract that provides for a
149 specified amount of supplies over a specified period, with deliveries scheduled according to a
150 specified schedule.

151 (26) "Design professional" means:

152 (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects
153 Licensing Act; [or]

154 (b) an individual licensed as a professional engineer or professional land surveyor
155 under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing
156 Act[-]; or

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

159 (27) "Design professional procurement process" means the procurement process
160 described in Part 15, Design Professional Services.

161 (28) "Design-build" means the procurement of design professional services and
162 construction by the use of a single contract.

163 (29) "Design professional services" means:

164 (a) professional services within the scope of the practice of architecture as defined in
165 Section [58-3a-102](#);

166 (b) professional engineering as defined in Section [58-22-102](#); [or]

167 (c) master planning and programming services[-]; or

168 (d) services within the scope of the practice of commercial interior design, as defined
169 in Section [58-86-102](#).

170 (30) "Director" means the director of the division.

171 (31) "Division" means the Division of Purchasing and General Services, created in
172 Section [63A-2-101](#).

173 (32) "Educational procurement unit" means:

174 (a) a school district;

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

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

177 (d) the Utah Education and Telehealth Network;

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

179 (f) the State Board of Education.

180 (33) "Established catalogue price" means the price included in a catalogue, price list,
181 schedule, or other form that:

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

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

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

187 (34) "Executive branch procurement unit" means a department, division, office,
188 bureau, agency, or other organization within the state executive branch.

189 (35) "Fixed price contract" means a contract that provides a price, for each
190 procurement item obtained under the contract, that is not subject to adjustment except to the
191 extent that:

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

194 (b) an adjustment is required by law.

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

197 (a) is based on the consumer price index or another commercially acceptable index,

198 source, or formula; and

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

200 (37) "Grant" means an expenditure of public funds or other assistance, or an agreement
201 to expend public funds or other assistance, for a public purpose authorized by law, without
202 acquiring a procurement item in exchange.

203 (38) "Head of a procurement unit" means:

204 (a) for a legislative procurement unit, any person designated by rule made by the
205 applicable rulemaking authority;

206 (b) for an executive branch procurement unit:

207 (i) the director of the division; or

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

209 (c) for a judicial procurement unit:

210 (i) the Judicial Council; or

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

212 (d) for a local government procurement unit:

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

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

215 (e) for a local district other than a public transit district, the board of trustees of the
216 local district or a designee of the board of trustees;

217 (f) for a special service district, the governing body of the special service district or a
218 designee of the governing body;

219 (g) for a local building authority, the board of directors of the local building authority
220 or a designee of the board of directors;

221 (h) for a conservation district, the board of supervisors of the conservation district or a
222 designee of the board of supervisors;

223 (i) for a public corporation, the board of directors of the public corporation or a
224 designee of the board of directors;

225 (j) for a school district or any school or entity within a school district, the board of the

226 school district, or the board's designee;

227 (k) for a charter school, the individual or body with executive authority over the charter
228 school, or the individual's or body's designee;

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

231 (m) for a public transit district, the board of trustees or a designee of the board of
232 trustees;

233 (n) for the State Board of Education, the State Board of Education or a designee of the
234 State Board of Education; or

235 (o) for the Utah Communications Authority, established in Section 63H-7a-201, the
236 executive director of the Utah Communications Authority or a designee of the executive
237 director.

238 (39) "Immaterial error":

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

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

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

243 (b) includes:

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

246 (ii) a typographical error;

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

248 (iv) any other error that the chief procurement officer or the head of a procurement unit
249 with independent procurement authority reasonably considers to be immaterial.

250 (40) "Indefinite quantity contract" means a fixed price contract that:

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

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

- 254 (ii) provides a maximum purchase limit.
- 255 (41) "Independent procurement authority" means authority granted to a procurement
256 unit under Subsection 63G-6a-106(4)(a).
- 257 (42) "Invitation for bids":
- 258 (a) means a document used to solicit:
- 259 (i) bids to provide a procurement item to a procurement unit; or
- 260 (ii) quotes for a price of a procurement item to be provided to a procurement unit; and
- 261 (b) includes all documents attached to or incorporated by reference in a document
262 described in Subsection (42)(a).
- 263 (43) "Issuing procurement unit" means a procurement unit that:
- 264 (a) reviews a solicitation to verify that it is in proper form;
- 265 (b) causes the notice of a solicitation to be published; and
- 266 (c) negotiates and approves the terms and conditions of a contract.
- 267 (44) "Judicial procurement unit" means:
- 268 (a) the Utah Supreme Court;
- 269 (b) the Utah Court of Appeals;
- 270 (c) the Judicial Council;
- 271 (d) a state judicial district; or
- 272 (e) an office, committee, subcommittee, or other organization within the state judicial
273 branch.
- 274 (45) "Labor hour contract" is a contract under which:
- 275 (a) the supplies and materials are not provided by, or through, the contractor; and
- 276 (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and
277 profit for a specified number of labor hours or days.
- 278 (46) "Legislative procurement unit" means:
- 279 (a) the Legislature;
- 280 (b) the Senate;
- 281 (c) the House of Representatives;

282 (d) a staff office of the Legislature, the Senate, or the House of Representatives; or
283 (e) a committee, subcommittee, commission, or other organization:
284 (i) within the state legislative branch; or
285 (ii) (A) that is created by statute to advise or make recommendations to the Legislature;
286 (B) the membership of which includes legislators; and
287 (C) for which the Office of Legislative Research and General Counsel provides staff
288 support.

289 (47) "Local building authority" means the same as that term is defined in Section
290 [17D-2-102](#).

291 (48) "Local district" means the same as that term is defined in Section [17B-1-102](#).

292 (49) "Local government procurement unit" means:

293 (a) a county or municipality, and each office or agency of the county or municipality,
294 unless the county or municipality adopts its own procurement code by ordinance;

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

297 (c) a county or municipality that has adopted a portion of this chapter by ordinance, to
298 the extent that a term in the ordinance is used in the adopted portion of this chapter, and each
299 office or agency of that county or municipality.

300 (50) "Multiple award contracts" means the award of a contract for an indefinite
301 quantity of a procurement item to more than one person.

302 (51) "Multiyear contract" means a contract that extends beyond a one-year period,
303 including a contract that permits renewal of the contract, without competition, beyond the first
304 year of the contract.

305 (52) "Municipality" means a city, town, or metro township.

306 (53) "Nonadopting local government procurement unit" means:

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

310 (b) each office or agency of a county or municipality described in Subsection (53)(a).

311 (54) "Offeror" means a person who submits a proposal in response to a request for
312 proposals.

313 (55) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference
314 under the requirements of this chapter.

315 (56) "Procure" means to acquire a procurement item through a procurement.

316 (57) "Procurement":

317 (a) means a procurement unit's acquisition of a procurement item through an
318 expenditure of public funds, or an agreement to expend public funds, including an acquisition
319 through a public-private partnership;

320 (b) includes all functions that pertain to the acquisition of a procurement item,
321 including:

322 (i) preparing and issuing a solicitation; and

323 (ii) (A) conducting a standard procurement process; or

324 (B) conducting a procurement process that is an exception to a standard procurement
325 process under Part 8, Exceptions to Procurement Requirements; and

326 (c) does not include a grant.

327 (58) "Procurement item" means a supply, a service, or construction.

328 (59) "Procurement officer" means:

329 (a) for a procurement unit with independent procurement authority:

330 (i) the head of the procurement unit;

331 (ii) a designee of the head of the procurement unit; or

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

333 (b) for the division or a procurement unit without independent procurement authority,
334 the chief procurement officer.

335 (60) "Procurement unit":

336 (a) means:

337 (i) a legislative procurement unit;

- 338 (ii) an executive branch procurement unit;
- 339 (iii) a judicial procurement unit;
- 340 (iv) an educational procurement unit;
- 341 (v) the Utah Communications Authority, established in Section [63H-7a-201](#);
- 342 (vi) a local government procurement unit;
- 343 (vii) a local district;
- 344 (viii) a special service district;
- 345 (ix) a local building authority;
- 346 (x) a conservation district;
- 347 (xi) a public corporation; or
- 348 (xii) a public transit district; and
- 349 (b) does not include a political subdivision created under Title 11, Chapter 13,
- 350 Interlocal Cooperation Act.
- 351 (61) "Professional service" means labor, effort, or work that requires an elevated
- 352 degree of specialized knowledge and discretion, including labor, effort, or work in the field of:
- 353 (a) accounting;
- 354 (b) administrative law judge service;
- 355 (c) architecture;
- 356 (d) construction design and management;
- 357 (e) engineering;
- 358 (f) financial services;
- 359 (g) information technology;
- 360 (h) the law;
- 361 (i) medicine;
- 362 (j) psychiatry; or
- 363 (k) underwriting.
- 364 (62) "Protest officer" means:
- 365 (a) for the division or a procurement unit with independent procurement authority;

- 366 (i) the head of the procurement unit;
- 367 (ii) the head of the procurement unit's designee who is an employee of the procurement
- 368 unit; or
- 369 (iii) a person designated by rule made by the applicable rulemaking authority; or
- 370 (b) for a procurement unit without independent procurement authority, the chief
- 371 procurement officer or the chief procurement officer's designee who is an employee of the
- 372 division.
- 373 (63) "Public corporation" means the same as that term is defined in Section [63E-1-102](#).
- 374 (64) "Public entity" means any government entity of the state or political subdivision of
- 375 the state, including:
 - 376 (a) a procurement unit;
 - 377 (b) a municipality or county, regardless of whether the municipality or county has
 - 378 adopted this chapter or any part of this chapter; and
 - 379 (c) any other government entity located in the state that expends public funds.
- 380 (65) "Public facility" means a building, structure, infrastructure, improvement, or other
- 381 facility of a public entity.
- 382 (66) "Public funds" means money, regardless of its source, including from the federal
- 383 government, that is owned or held by a procurement unit.
- 384 (67) "Public transit district" means a public transit district organized under Title 17B,
- 385 Chapter 2a, Part 8, Public Transit District Act.
- 386 (68) "Public-private partnership" means an arrangement or agreement, occurring on or
- 387 after January 1, 2017, between a procurement unit and one or more contractors to provide for a
- 388 public need through the development or operation of a project in which the contractor or
- 389 contractors share with the procurement unit the responsibility or risk of developing, owning,
- 390 maintaining, financing, or operating the project.
- 391 (69) "Qualified vendor" means a vendor who:
 - 392 (a) is responsible; and
 - 393 (b) submits a responsive statement of qualifications under Section [63G-6a-410](#) that

394 meets the minimum mandatory requirements, evaluation criteria, and any applicable score
395 thresholds set forth in the request for statement of qualifications.

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

398 (71) "Request for information" means a nonbinding process through which a
399 procurement unit requests information relating to a procurement item.

400 (72) "Request for proposals" means a document used to solicit proposals to provide a
401 procurement item to a procurement unit, including all other documents that are attached to that
402 document or incorporated in that document by reference.

403 (73) "Request for proposals process" means the procurement process described in Part
404 7, Request for Proposals.

405 (74) "Request for statement of qualifications" means a document used to solicit
406 information about the qualifications of a person interested in responding to a potential
407 procurement, including all other documents attached to that document or incorporated in that
408 document by reference.

409 (75) "Requirements contract" means a contract:

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

412 (b) that:

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

414 (ii) provides a maximum purchase limit.

415 (76) "Responsible" means being capable, in all respects, of:

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

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

419 (77) "Responsive" means conforming in all material respects to the requirements of a
420 solicitation.

421 (78) "Sealed" means manually or electronically secured to prevent disclosure.

- 422 (79) "Service":
- 423 (a) means labor, effort, or work to produce a result that is beneficial to a procurement
- 424 unit;
- 425 (b) includes a professional service; and
- 426 (c) does not include labor, effort, or work provided under an employment agreement or
- 427 a collective bargaining agreement.
- 428 (80) "Small purchase process" means the procurement process described in Section
- 429 [63G-6a-506](#).
- 430 (81) "Sole source contract" means a contract resulting from a sole source procurement.
- 431 (82) "Sole source procurement" means a procurement without competition pursuant to
- 432 a determination under Subsection [63G-6a-802\(1\)\(a\)](#) that there is only one source for the
- 433 procurement item.
- 434 (83) "Solicitation" means an invitation for bids, request for proposals, request for
- 435 statement of qualifications, or request for information.
- 436 (84) "Solicitation response" means:
- 437 (a) a bid submitted in response to an invitation for bids;
- 438 (b) a proposal submitted in response to a request for proposals; or
- 439 (c) a statement of qualifications submitted in response to a request for statement of
- 440 qualifications.
- 441 (85) "Special service district" means the same as that term is defined in Section
- 442 [17D-1-102](#).
- 443 (86) "Specification" means any description of the physical or functional characteristics
- 444 or of the nature of a procurement item included in an invitation for bids or a request for
- 445 proposals, or otherwise specified or agreed to by a procurement unit, including a description of:
- 446 (a) a requirement for inspecting or testing a procurement item; or
- 447 (b) preparing a procurement item for delivery.
- 448 (87) "Standard procurement process" means:
- 449 (a) the bidding process;

450 (b) the request for proposals process;

451 (c) the approved vendor list process;

452 (d) the small purchase process; or

453 (e) the design professional procurement process.

454 (88) "State cooperative contract" means a contract awarded by the division for and in
455 behalf of all public entities.

456 (89) "Statement of qualifications" means a written statement submitted to a
457 procurement unit in response to a request for statement of qualifications.

458 (90) "Subcontractor":

459 (a) means a person under contract to perform part of a contractual obligation under the
460 control of the contractor, whether the person's contract is with the contractor directly or with
461 another person who is under contract to perform part of a contractual obligation under the
462 control of the contractor; and

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

465 (91) "Supply" means a good, material, technology, piece of equipment, or any other
466 item of personal property.

467 (92) "Tie bid" means that the lowest responsive bids of responsible bidders are
468 identical in price.

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

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

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

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

474 (94) "Transitional costs":

475 (a) means the costs of changing:

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

- 478 (ii) from an existing type of procurement item to another type;
- 479 (b) includes:
- 480 (i) training costs;
- 481 (ii) conversion costs;
- 482 (iii) compatibility costs;
- 483 (iv) costs associated with system downtime;
- 484 (v) disruption of service costs;
- 485 (vi) staff time necessary to implement the change;
- 486 (vii) installation costs; and
- 487 (viii) ancillary software, hardware, equipment, or construction costs; and
- 488 (c) does not include:
- 489 (i) the costs of preparing for or engaging in a procurement process; or
- 490 (ii) contract negotiation or drafting costs.
- 491 (95) "Trial use contract" means a contract for a procurement item that the procurement
- 492 unit acquires for a trial use or testing to determine whether the procurement item will benefit
- 493 the procurement unit.
- 494 (96) "Vendor":
- 495 (a) means a person who is seeking to enter into a contract with a procurement unit to
- 496 provide a procurement item; and
- 497 (b) includes:
- 498 (i) a bidder;
- 499 (ii) an offeror;
- 500 (iii) an approved vendor;
- 501 (iv) a design professional; and
- 502 (v) a person who submits an unsolicited proposal under Section [63G-6a-712](#).