

Policy 4-5 Rev. 7
Date: March 5, 2002

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Subject: SOLICITATION OF BIDS, PROPOSALS AND THE AWARD OF PROCUREMENT CONTRACTS

I. PURPOSE

To establish procedures for the solicitation of bids and proposals, and award of university procurement contracts, consistent with the provisions of the Utah Procurement Code.

II. REFERENCES

[Policy and Procedure 4-1](#), University Procurement

[Policy and Procedure 4-2](#), Requisition Preparation and Processing

[Policy and Procedure 4-3](#), Small Purchases and Expedited Procurement

[Policy and Procedure 4-4](#), Restricted Purchases and Special Procurement

Utah Code Annotated, sections 63-56-1 et seq. (Utah Procurement Code)

III. DEFINITIONS

See [Policy and Procedure 4-1](#)

IV. POLICY

A. Competitive Bidding

1. Except as otherwise provided in this policy, procurement of items in excess of \$45,000 will be awarded only after solicitation of sealed competitive bids or proposals.
2. Bids and proposals shall be invited from the widest practical selection of firms with proven performance from whom, in the judgment of Procurement & Supply Management (Procurement), the procurement needs of the university can be satisfied.
3. Procurement of items estimated to cost \$45,000 or less shall be processed pursuant to [Policy and Procedure 4-3](#).

B. Specifications

1. Procurement is responsible for the preparation, issuance, revision, maintenance and monitoring of specifications for supplies, services and construction required by the university. In the preparation of specifications, the purchasing agent may obtain the advice and assistance of requisitioning departments as needed and, in connection with construction contracts, shall request such advice and assistance from the director of Campus Design and Construction.

2. All specifications shall seek to promote overall economy and best use for the purposes intended, shall encourage competition when applicable in satisfying university needs and shall not be unduly restrictive.
3. Subject to the nonrestrictive policy stated in paragraph 2, specifications and/or requests for bids or proposals may designate a brand name "or equal" as a means to identify the performance or other specific requirements of a procurement. When so used, the salient features of the named brand that must be met by bidders/offers shall be clearly specified.
4. An individual who has participated in the preparation of a specification shall not be eligible to participate in or receive a contract award for any university procurement using such specification. Exceptions to this rule may be granted by the vice president for administrative services, or his/her designee, upon recommendation of the purchasing agent, if (a) an exception is justified by the existence of emergency conditions (see Section E.3. below); (b) there is only one practicable source of supply for the contract requirements (see Section E.2. below); or (c) it is not practicable or advantageous to the university to deny an award to the individual or to a bidder/supplier with which that individual is associated.

C. Bidding Procedures

1. The purchasing agent is responsible for assuring that all bidding procedures, including the invitation to bid, giving of notice, establishment of criteria for bid evaluation, opening and evaluation of bids received, acceptance of bids and award of contracts are in compliance with the requirements of the Utah Procurement Code and university regulations.
2. Public notice of invitations to bid shall be given a reasonable time, not less than ten (10) calendar days, prior to the date for the opening of bids.
3. The amount of each bid, together with the name, business address, telephone number and identification number of any applicable contractor's license, of each bidder, shall be recorded at the time and place of bid opening. That record shall be open to public inspection.
4. Correction or withdrawal of inadvertently erroneous bids before or after award, and the cancellation of awards or contracts based on such bid mistakes, may be authorized by the vice president for administrative services, or his/her designee, when requested in writing and accompanied by full documentation of the facts leading to presentation of the erroneous bid. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the university or fair competition will be permitted. A decision to permit the correction or withdrawal of a bid, or to cancel an award or contract based on an alleged bid mistake shall be in writing, with a statement of reasons that takes into consideration the written evaluation and recommendation of the purchasing agent.
5. When it is considered impractical to prepare initially a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.
6. When it is considered impractical to prepare initially a purchase description to support an award based on price, an invitation for bids may be issued requesting the

submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

D. Request for Proposals

1. If the purchasing agent determines in writing, with the approval of the vice president for administrative services or his/her designee, that the use of competitive sealed bids for a particular procurement contract, or for particular types of recurring procurement contracts, is either not practicable or not advantageous to the university, a contract within the scope of such determination may be entered into by competitive sealed proposals.
2. The purchasing agent is responsible for the preparation, issuance, giving of notice, opening, registering, evaluating, negotiating and awarding of contracts pursuant to requests for proposals, when the use of requests for proposals is authorized; provided that all such proceedings shall be in conformity with the Utah Procurement Code and, in order to assure maximum practicable competition, shall be subject to the applicable time limitations and other procedures specified in Section III. C. above relating to competitive bidding.
3. Award shall be made to the responsible offerer whose proposal is determined in writing to be the most advantageous to the university, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

E. Exceptions: Procurement without Competition

1. Small purchases shall be processed in accordance with [Policy and Procedure 4-3](#).
2. Sole source contracts. A contract may be awarded for a supply, service or construction item without competitive bidding when the purchasing agent, with the approval of the vice president for administrative services or his/her designee, determines in writing that there is only one practicable source for the requisitioned item.
3. Emergency procurement. When emergency conditions exist that create a threat to public health, welfare or safety, procurement without full competition may be authorized pursuant to Section
4. D. of [Policy and Procedure 4-3](#).
5. Records. Procurement shall maintain, in accordance with the Utah Archives and Records Act, an official record of all contracts made under paragraphs 3 and 4 above summarizing with respect to each contract (a) the contractor's name, (b) the amount and type of the contract and (c) the supplies, services or construction procured.

F. Prequalification

When determined to be necessary or appropriate by Procurement, prospective suppliers may be prequalified for particular types of supplies, services and construction. Solicitation mailing lists of potential contractors shall include but shall not be limited to prequalified suppliers.

G. Contractual Terms

1. Any contractual terms permitted by law may be used for university procurement purposes, as the best interests of the university may require; except that the use of a cost-plus-a-percentage-of-cost contract is prohibited.
2. The purchasing agent is responsible for assuring compliance with procedural requirements of the Utah Procurement Code applicable to the terms and provisions of procurement contracts, including requirements that specified determinations be made as a condition precedent to the inclusion or modification of specified contractual provisions (see Utah Code Annotated sections 63-56-32, 63-56-40) or the use of change orders (see Utah Code Annotated section 63-56-41).
3. When the best interests of the university so require, the purchasing agent may include in university procurement contracts any or all contract clauses, so far as relevant, that are authorized by the Utah Procurement Code (Utah Code Annotated sections 63-56-40 to 63-56-41) with respect to adjustments in price, time of performance, scope of contract work, variations between estimated and actual quantities, site conditions, remedies and other contract provisions.
4. Procurement shall develop, modify and maintain a file of standard contract clauses to be used in university procurement contracts pursuant to paragraph 3 above, and such clauses shall be deemed incorporated herein by reference. The purchasing agent may modify any such clause for inclusion in any particular contract upon a written determination that such variation will promote the interests of the university or encourage fair and open competition; provided that notice of any such material variation must be given in the invitation to bid or request for proposals.

H. Procurement of Construction Work

1. Construction contracts will be entered into with responsible licensed contractors, subject to the provisions of the Utah Procurement Code (see Utah Code Annotated sections 63-56-36 to 63-56-39). For the purpose of this provision, the term "construction" has the same meaning as in the Utah Procurement Code, Utah Code Annotated section 63- 56-5(4) and includes remodeling, renovation and landscaping.
2. Construction and remodeling contracts are subject to the provisions outlined in [Policy and Procedure 4.1](#) IV B i.
3. Bid security.
 - a. Bid security in an amount equal to at least five (5) percent of the amount of the bid shall be required for all competitive sealed bidding for construction contracts with an estimated cost of \$50,000 or more, and for any other contracts where such bid security is deemed essential by the purchasing agent. Bid security shall be a bond provided by a surety company authorized to do business in this state, the equivalent in cash or any other form satisfactory to the university and consistent with the Utah Procurement Code.
 - b. When a bidder fails to comply with the requirement for bid security set forth in the invitation for bids, the bid shall be rejected unless the purchasing agent determines in writing that the failure to comply with the security requirements is nonsubstantial.
4. Performance and payment bonding.

- a. When a construction contract is awarded for an amount exceeding \$50,000 and performance and payment bonding is stipulated in the bid solicitation, performance and payment bonds, or other forms of security satisfactory to the university must be delivered to the university, and shall be binding on the parties upon the execution of the contract, subject to the provisions of the Utah Procurement Code (see Utah Code Annotated section 63-56-39).
- b. The form of the performance and payment bonds shall be substantially the same as for similar bonds required in connection with construction contracts awarded by the Utah State Building Board.
- c. Performance and payment bonds may be required for construction contracts of \$50,000 or less in amount; provided that to promote the best interest of the university, the purchasing agent, with the approval of the vice president for administrative services, or his/her designee, may waive the requirement of performance and payment bonds on contracts either below or over \$50,000 in amount.

I. Architect-Engineering Services

1. Except as otherwise provided herein (see Section III. E. above), it is the policy of the university publicly to announce on an annual basis all requirements for architect-engineer services and to negotiate contracts for architect-engineer services on the basis of demonstrated competence, qualification for, and express interest in the type of services required, and at fair and reasonable prices. This paragraph does not affect the authority of and does not apply to procedures undertaken by the university to obtain the services of architects or engineers in the capacity of employees.
2. Procurement process.
 - a. In order to procure architect-engineer services, the director of Campus Design and Construction shall encourage firms engaged in the lawful practices of their profession to submit annually an expression of interest, together with a statement of qualifications and performance data, responsive to published criteria approved by the director.
 - b. A selection committee for architect-engineer services contracts, appointed by the director of Campus Design and Construction or his/her designee, shall evaluate current statements of qualifications and performance data on file, together with those that may be submitted by other firms in response to the announcement.
 - c. The selection committee shall, where feasible, consider not less than three firms, and based upon the established criteria, shall select therefrom not less than three of the firms deemed to be the most highly qualified to provide the services required.
3. Procurement shall award a contract to a qualified firm at compensation which the purchasing agent, after consultation with the selection committee, determines to be fair and reasonable to the university, after taking into account the estimated value, scope, complexity and professional nature of the services to be rendered. Should the purchasing agent be unable to negotiate a satisfactory contract with the firm first selected, at a price determined to be fair and reasonable to the university, discussions with that firm shall be formally terminated and undertaken with a second qualified firm. Failing accord with the second firm, discussions shall be formally terminated

and shall then be undertaken with a third qualified firm. Should agreement not be reached or the university be unable to negotiate a contract at a fair and reasonable price with any of the selected firms, the purchasing agent, upon recommendation of the committee, shall undertake discussions with additional firms until an agreement is reached.

4. When determined by the purchasing agent, with approval of the vice president for administrative services or his/her designee, the award of multiple primary vendor contracts for supplies, services or construction is authorized. The contract file shall contain the basis upon which this determination is made.

Approved: Institutional Council 1/14/85
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