

# University Rule 3-100B: Solicitation of Bids, Proposals, Sole Source and the Award of Procurement Contracts

## I. Purpose and Scope

To implement Policy 3-100 and outline Rules for the solicitation of bids and proposals, and award of University procurement contracts, consistent with the provisions of the Utah Procurement Code. This Rule is binding for all University colleges, departments, and units, including University Hospitals & Clinics..

## II. Definitions

See [Policy 3-100](#), University Procurement

## III. Rule

### A. Competitive Bidding

1. Except as otherwise provided in this Rule, procurement of items in excess of the formal purchase threshold (\$50,000) will be awarded only after solicitation of sealed competitive bids or proposals. (see [Rule 3-100D](#) for all procurement thresholds)
2. Bids and proposals shall be invited from a reasonable selection of firms from whom, in the judgment of Procurement & Contracting Services (Purchasing Department), the procurement needs of the University can be satisfied.
3. Facilities Management is responsible to conduct procurement for construction and architect and engineering services as delegated by the Vice President for Administrative Services or his/her designee and the Director of Purchasing and the Utah State Building Board. Under this delegation, Facilities Management may follow procurement rules adopted by the Utah State Building Board.

## B. Specifications

1. The Purchasing Department is responsible for the approval, issuance, revision, maintenance and monitoring of specifications for supplies and services required by the University. Organizational units of the University will prepare specifications for the supplies or services they require.
2. Facilities Management is responsible for the approval, issuance, revision, maintenance and monitoring of construction, architect and engineer specifications, procurement solicitations and contracts within their delegation. This delegation will be in the form of a memorandum of understanding entered into by the Director of Purchasing and Facilities Management.
3. University of Utah Hospitals & Clinics Purchasing is responsible for the approval, issuance, revision, maintenance and monitoring of specifications, procurement solicitations and contracts for University of Utah Hospital & Clinics. This delegation will be in the form of a memorandum of understanding entered into by the Director of Purchasing and University of Utah Hospital & Clinics.
4. 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 may not be unduly restrictive.
5. Subject to the nonrestrictive clause stated in paragraph 4, 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 procurement. When so used, the salient features of the brand name that must be met by bidders/offerors shall be clearly specified.
6. A supplier who has participated in the writing of a specification shall not be eligible to participate in or receive a contract award for any University procurement using such specification.

### C. Bidding Requirements

1. The Director of Purchasing 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 awarding of contracts are in compliance with the requirements of the Utah Procurement Code and University Regulations.
2. Public notice of invitations for bids shall be given a reasonable time, not less than seven (7) consecutive days, prior to the date for the opening of bids. The Director of Purchasing may determine in writing that a shorter time is deemed necessary for a particular procurement.
3. The amount of each bid, together with the name of each bidder, shall be recorded in writing or electronically at the time and place of bid opening.
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 Director of Purchasing 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.
5. The award of a bid shall be made to the lowest responsive and responsible bidder who meets the objective criteria described in the invitation for bids.
6. A multiple stage bidding process may be initiated 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. A request for proposals process may be used instead of bidding if the Director of Purchasing determines in writing that the request for proposal process will provide the best value to the organizational unit, and if criteria in addition to cost must be considered.
2. The Director of Purchasing or designee is responsible for ensuring the integrity of the request for proposal process in conformance with the Utah Procurement Code.
3. Public notice of request for proposals shall be given a reasonable time, not less than seven (7) consecutive days, prior to the date for the opening of proposals. A longer time period may be required.
4. The request for proposals process shall include:
  - a. a description of the procurement items sought;
  - b. a description of the subjective and objective criterion that will be used to evaluate the proposal;
  - c. the standard contractual terms and conditions;
  - d. the relative weight that will be given to each criterion including cost;
  - e. the formula that will be used to determine the score for cost;
  - f. a description of each stage and the criteria and scoring that will be used to screen offerors at each stage for multi-stage request for proposals;
  - g. all other requirements of the Utah Procurement Code.
5. An evaluation committee shall be appointed consisting of at least three individuals that:
  - a. do not have a conflict of interest;
  - b. can fairly evaluate each proposal;

- c. during the time of the procurement, do not contact or communicate with an offeror for any reason other than conducting the procurement process or University business not related to the procurement;
  - d. unless an exception is made in writing by the Director of Purchasing, shall not know or have access to any information relating to the cost proposals from suppliers until after the evaluation committee submits its final recommended scores on all other criteria to Purchasing;
  - e. meets all other requirements of the Utah Procurement Code.
6. Award shall be made to the responsive and responsible offerer whose proposal is the highest scored. If the highest scored offeror is disqualified, the award shall be made to the next highest scored responsive and responsible offeror or the request for proposal may be cancelled. The contract file shall contain the basis on which the award is made.

If the contract is awarded to an offeror other than the lowest cost offeror, and the difference between the cost of the accepted proposal and the lowest proposal exceeds the greater of \$10,000 or 5% of the lowest cost offer, Purchasing shall obtain from the organizational unit:

- a. a written cost-benefit analysis that explains in general terms the advantage to the organizational unit of the higher cost offeror
- b. an estimated added financial value to the organizational unit for each criterion that justifies the award to the higher cost offeror
- c. to the extent that assigning a financial value to a particular criterion is not practicable, a written statement why it is not practicable to assign a financial value and the advantage to the organizational unit, based on the particular criterion, of awarding the contract to the higher cost offeror

- d. an explanation that the value of the advantage to the organizational unit exceeds the value of the difference between the cost of the higher and the lower cost offerors

E. Exceptions: Procurement without Competition

1. Small purchases up to the single procurement threshold or the professionals, providers and consultants threshold shall be processed in accordance with University Regulations. (See Rules [R3-100D](#), [E](#))
2. The Purchasing Department may utilize contracts authorized by the Utah Procurement Code without additional competitive processes.
3. Sole source contracts. A contract exceeding the formal purchase threshold may be awarded for a supply, service or construction item without competitive bidding when the Director of Purchasing determines in writing that there is only one source for the requisitioned item. This may include, but not be limited to, any of the following considerations: (See Rule [R3-100D](#))
  - a. the award is a condition of a donation that will fund the full cost of the supply, service or construction
  - b. compatibility of equipment, technology, software, accessories, replacement parts or service
  - c. an item is needed for trial use or testing
  - d. transitional costs (which include training, conversion, compatibility, system downtime, disruption of service, installation, or ancillary costs) to change from an existing supplier or type of item to another is unreasonable or cost prohibitive
  - e. procurement of public utility services

- f. delays due to a procurement process and resulting contract that may impact the timely delivery of goods or services and would cause financial harm to the University
4. Publication of notice of sole source.
- a. Public notice of a sole source shall be made for a procurement that exceeds the formal purchase threshold. The notice shall be given a reasonable time, not less than seven (7) consecutive days, prior to the date when comments are due.
  - b. The Director of Purchasing may make a written determination that a shorter time period is needed.
  - c. A public notice for sole source items or services will allow for additional purchases of the like items or services for a period of up to five (5) years.
  - d. A public notice for a category or categories of sole source items or services will allow for additional purchases from the category or categories for a period of up to five (5) years.
5. An authorized buyer in the Purchasing Department may utilize alternative procurement methods, such as informal price quotations and direct negotiations to purchase items that include, but are not limited to, the following when determined to be more practicable or advantageous to the University:
- a. used vehicles, equipment, etc.
  - b. live animals
  - c. hotels, conference facilities and services
6. Emergency Procurement (See details in [Policy 3-100](#))

F. Prequalification

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

#### G. Contractual Terms

1. 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 Director of Purchasing 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 or the use of change orders.
3. The Purchasing Department shall develop, modify and maintain a file of standard contract clauses to be used in University procurement contracts, and such clauses shall be deemed incorporated herein by reference. The Director of Purchasing 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. Facilities Management shall use standard contract clauses for contracts for construction and architect and engineering services as required by state law and adopted by the Utah State Building Board.

#### H. Protest

Protests filed by aggrieved bidders, offerors, or potential bidders or offerors, shall be handled by the Purchasing Department in consultation with legal counsel and in accordance with state law. Facilities Management or University of Utah

Hospital & Clinics Purchasing in consultation with legal counsel and in accordance with state law, shall handle protests on their delegated purchases and shall notify the Director of Purchasing of all protests.

#### **IV. Rules, Procedures, Guidelines, Forms and other Related Resources**

##### **A. Rules**

Rule [R3-100C](#), Requisition Use

Rule [R3-100D](#), Delegated Small Purchase Authority

Rule [R3-100E](#), Restricted Purchases and Special Procurement

##### **B. Procedure *[reserved]***

##### **C. Guidelines *[reserved]***

##### **D. Forms *[reserved]***

##### **E. Other related resource materials *[reserved]***

#### **V. References**

Utah Code Annotated, sections 63-6a-101 et seq. (Utah Procurement Code)

#### **VI. Contacts**

Rule Owner: Director, Procurement & Contracting Services

#### **VII. History**

Approved Academic Senate, Executive Committee; September 17, 2013

Approved Academic Senate; October 7, 2013