

PART 3

SOURCE SELECTION AND CONTRACT FORMATION

SUBPART 3-1 -- COMPETITIVE SEALED BIDDING;

MULTI-STEP SEAL BIDDING

3-101 Content of the Invitation For Bids.

- (1) Use. The Invitation for Bids is used to initiate a competitive sealed bid procurement.
- (2) Content. The Invitation for Bids include the following:
 - (a) Instructions and information to bidders concerning the bid submission requirements, including the time and closing date for submission of bids, the address of the office to which bids are to be delivered, and any other special information;
 - (b) The purchase description, evaluation factors, delivery or performance schedule, and inspection and acceptance requirements not included in the purchase description; and
 - (c) The contract terms and conditions, including warranty and bonding or other security requirements, as applicable.
- (3) Incorporation by Reference. The Invitation for Bids may incorporate documents by reference provided that the Invitation for Bids specifies where such documents can be obtained.
- (4) Acknowledgment of Amendments. The Invitation for Bids shall require the acknowledgment of the receipt of all amendments issued.

3-102 Bidding Time.

Bidding time is the period of time between the date of distribution of the Invitation for Bids and the date set for opening of bids. In each case bidding time will be set to provide bidders a reasonable time to prepare their bids. A minimum of 10 calendar days shall be provided unless a shorter time is deemed necessary for a particular procurement as determined in writing by the purchasing agent.

3-103 Bidder Submissions.

- (1) Bid Form. The Invitation for Bids shall provide a form which shall include space in which the bid price shall be inserted and which the bidder shall sign and submit along with all other necessary submissions.
- (2) Facsimile Bids. The Invitation for Bids may state that facsimile bids will be considered whenever they are received in hand at the designated office by the time specified for bid opening. Such facsimile bids shall contain specific reference to the Invitation for Bids, the time and place of delivery, and a statement that the bidder agrees to all the terms, conditions, and

provisions of the Invitation for Bids. Bidders submitting facsimile bids shall submit a formal bid on the Invitation for Bids form within three days of the bid opening date or a time designated by the purchasing agent.

(3) Bid Samples and Descriptive Literature.

(a) Descriptive literature means information available in the ordinary course of business which shows the characteristics, construction, or operation of an item and assists the purchasing agency in considering whether the item meets requirements or criteria set forth in the invitation.

(b) Bid sample means a sample to be furnished by a bidder to show the characteristics of the item offered in the bid.

(c) Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the items bid.

(d) Samples of items, when called for in the Invitation for Bids, must be furnished free of expense, and if not destroyed by testing, will upon request, be returned at the bidder's expense. Samples submitted by the successful bidder may be held for comparison with merchandise furnished and will not necessarily be returned. Samples must be labeled or otherwise identified as called for by the purchasing agency.

(4) Bid Security. Bid and performance bonds or other security may be required for supply contracts or service contracts as the purchasing agent deems advisable to protect the interests of the purchasing agency. Any such requirements must be set forth in the solicitation. Bid or performance bonds should not be used as a substitute for a determination of a bidder or offeror responsibility.

(5) Bid Price. Bid prices submitted in response to an invitation for bids must stand alone and may not be dependent upon a bid submitted by any other bidder. A bid reliant upon the submission of another bidder will not be considered for award.

3-104 Public Notice.

(1) Distribution. Invitation for Bids or notices of the availability of Invitation for Bids shall be mailed or otherwise furnished to a sufficient number of bidders for the purpose of securing reasonable competition. Notices of availability shall indicate where, when, and for how long Invitation for Bids may be obtained; generally describe the supply, service, or construction desired; and may contain other appropriate information. (See also Section 3-105 (Bidder Lists).) Where appropriate, the purchasing agent may require payment of a fee or a deposit for the supplying of the Invitation for Bids.

(2) Publication. Every procurement in excess of \$50,000 shall be publicized in any or all of the following:

(a) in a newspaper of general circulation;

- (b) in a newspaper of local circulation in the area pertinent to the procurement;
- (c) in industry media; or
- (d) in a government publication designed for giving public notice.

(3) Public Availability. A copy of the Invitation for Bids shall be made available for public inspection at the purchasing agent's office.

3-105 Bidder List.

(1) Purpose. Lists of qualified prospective bidders by commodity shall be electronically compiled and maintained by the Purchasing Agent or purchasing department for the purpose of soliciting competition on various types of supplies, services, and construction.

(2) Public Availability. Subject to procedures established by the purchasing agent, names and addresses on bidder lists shall be available for public inspection.

3-106 Pre-Bid Conferences.

Pre-bid conferences may be conducted to explain the procurement requirements. They shall be announced to all prospective bidders known to have received an Invitation for Bids. The conference should be held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by written amendment as provided in Section 3-107 (Amendments to Invitation for Bids) and the Invitation for Bids and the notice of the pre-bid conference shall so provide. If a written summary of the conference is deemed advisable by the purchasing agent, a copy shall be supplied to all those prospective bidders known to have received an Invitation for Bids and shall be available as public record.

3-107 Amendments to Invitation for Bids.

(1) Application. Amendments should be used to:

(a) make any changes in the Invitation for Bids such as changes in quantity, purchase descriptions, delivery schedules, and opening dates;

(b) correct defects or ambiguities; or

(c) furnish to other bidders information given to one bidder if such information will assist the other bidders in submitting bids or if the lack of such information would be equitable to other bidders.

(2) Form. Amendments to Invitation for bids shall be identified as such and shall require that the bidder acknowledge receipt of all amendments issued.

(3) Distribution. Amendments shall be sent to all prospective bidders known to have received an

Invitation for Bids.

(4) Timeliness. Amendments shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time set for bid opening will not permit such preparation, to the extent possible such time shall be increased in the amendment or, if necessary, by telegram or telephone and confirmed in the amendment.

3-108 Pre-Opening Modification of Withdrawal of Bids.

(1) Procedure. Bids may be modified or withdrawn by written or telegraphic notice received in the office designated in the Invitation for Bid prior to the time set for bid opening. A telegraphic modification or withdrawal received by telephone prior to bid opening from the receiving telegraph company will be effective if the telegraph company confirms the message by sending a copy of the written telegram showing that the message was received at such office prior to bid opening.

(2) Disposition of Bid Security. Bid security, if any, shall be returned to the bidder when withdrawal of the bid is permitted.

(3) Records. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

3-109 Late Bids, Late Withdrawal, and Late Modifications.

Any bid, withdrawal, or modification received at the address designated in the Invitation for Bids after the time and date set for receipt of bids at the place designated for receipt is late. No late bid, late withdrawal, or late modification will be considered unless received before contract award, and the bid, withdrawal, or modification would have been timely but for the action or inaction of personnel directly serving the procurement activity or lateness in the delivery of the bid otherwise not attributable to the bidder's fault or negligence. The purchasing agent, in consultation with the Utah County Attorney's Office, shall determine whether to accept a late bid, late withdrawal, or late modification. All documents relating to the late bid, late withdrawal, or late modification shall be made a part of the appropriate procurement file.

3-110 Receipt, Opening, and Recording of Bids.

(1) Receipt. Upon receipt, all bids and modifications will be time stamped, but not opened. They shall be stored in a secure place until bid opening time.

(2) Opening and Recording. Bids and modifications shall be opened publicly, in the presence of one or more witnesses, at the time and place designated in the Invitation for Bids. The names of the bidders, the bid price, and such other information as is deemed appropriate by the purchasing agent, shall be read aloud or otherwise be made available. The opened bids shall be available for public inspection except to the extent the bidder designates trade secrets or other proprietary data to be confidential as set forth in Subsection (3) of this Section. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the nonconfidential portion of the bid. Make and model, and model or catalogue

numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary.

(3) Confidential Data. The purchasing agent shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. If the parties do not agree as to the disclosure of data, the purchasing agent shall inform the bidders in writing what portions of the bids will be disclosed.

3-111 Mistakes in Bids.

(1) If a mistake is attributable to an error judgment, the bid may not be corrected. Bid correction or withdrawal by reason of an inadvertent, nonjudgmental mistake is permissible, but at the discretion of the purchasing agent and to the extent it is not contrary to the interest of the purchasing agency or the fair treatment of the other bidders.

(2) Mistakes Discovered Before Opening. A bidder may correct mistakes discovered before bid opening by withdrawing or correcting the bid as provided in Section 3-108 (Pre-Opening Modification or Withdrawal of Bids).

(3) Confirmation of Bid. When it appears from a review of the bid that a mistake has been made, the bidder should be requested to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted. If the bidder alleges mistake, the bid may be corrected or withdrawn if the conditions set forth in Subsection (1), (4) and (6) of this Section are met.

(4) Mistakes Discovered After Opening But Before Award. This Subsection sets forth procedures to be applied in three situations described in paragraphs (a), (b) and (c) below in which mistakes in bids are discovered after opening but before award.

(a) Minor Informalities. Minor informalities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is not significant. The purchasing agent may waive such informalities. Examples include the failure of a bidder to:

(i) return the number of signed bids required by the Invitation for Bids;

(ii) sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound;

(iii) acknowledge receipt of an amendment to the Invitation for Bids, but only if:

(A) it is clear from the bid that the bidder received the amendment and intended to be bound by its terms; or

(B) the amendment involved had a negligible effect on price, quantity, quality, or delivery.

(b) Mistakes Where Intended Bid is Evident. If the mistake and the intended bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended bid and may

not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

(c) Mistakes Where Intended Bid is not Evident. A bidder may be permitted to withdraw a low bid if:

(i) a mistake is clearly evident on the face of the bid document but the intended bid is not similarly evident; or

(ii) The bidder submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.

(5) Mistakes Discovered After Award. Mistakes shall not be corrected after award of the contract.

(6) Written Approval or Denial Required. The purchasing agent shall approve or deny, in writing, a bidder's request to correct or withdraw a bid. Such approval or denial may be so indicated on the bidder's written request for correction or withdrawal.

3-112 Bid Evaluation and Award.

(1) General. The contract is to be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids. The Invitation for Bids shall set forth the requirements and criteria which will be used to determine the lowest responsive and responsible bidder. No bid shall be evaluated for any requirements or criteria that are not disclosed in the Invitation for Bids. An Invitation for Bids, a Request for Proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected, in whole or in part, when it is in the best interest of the purchasing agency, as determined by the purchasing agency. In the event of cancellation of the solicitation or rejection of all bids or proposals received in response to a solicitation, the reasons for cancellation or rejection shall be made a part of the bid file and shall be available for public inspection and the purchasing agency shall (a) re-solicit new bids using the same or revised specifications; or (b) withdraw the requisition for supplies or services.

(2) Responsibility and Responsiveness. Responsibility of prospective contractors is covered by Subpart 3-7 (Responsibility and Prequalification) of these regulations.

(3) Product Acceptability. The Invitation for Bids shall set forth the evaluation criteria to be used in determining product acceptability. It may require the submission of bid samples, descriptive literature, technical data, or other material. It may also provide for:

(a) inspection or testing of a product prior to award for such characteristics as quality or workmanship;

(b) examination of such elements as appearance, finish, taste, or feel; or

(c) other examinations to determine whether it conforms with any other purchase description requirements. The acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another but only to determine that a bidder's offering is acceptable as set forth in the Invitation for Bids. Any bidder's offering which does not meet the acceptability requirements shall be rejected.

(4) Determination of Lowest Bidder. Bids will be evaluated to determine overall economy for the intended use, in accordance with the evaluation criteria set forth in the Invitation for Bids. Examples of such criteria include but are not limited to, transportation cost, energy cost, ownership and other identifiable costs or life-cycle cost formula. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible such evaluation factors shall;

(a) be reasonable estimates based on upon information the purchasing agency has available concerning future use; and

(b) treat all bids equitably.

(5) Extension of Time for Bid or Proposal Acceptance. After opening bids or proposals, the purchasing agent may request bidders or offerors to extend the time during which their bids or proposals may be accepted, provided that, with regard to bids, no other change is permitted. The reasons for requesting such extension shall be documented.

(6) Only One Bid or Proposal Received. If only one responsive bid is received in response to an Invitation for Bids (including multi-step bidding), an award may be made to the single bidder if the purchasing agent finds that the price submitted is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for resolicitation. Otherwise, the bid may be rejected and:

(a) new bids or offers may be solicited;

(b) the proposed procurement may be canceled; or

(c) if the purchasing agent determines in writing that the need for the supply of service continues but that the price of the one bid is not fair and reasonable and there is no time for resolicitation or resolicitation would likely be futile, the procurement may then be conducted under Subpart 3-4 (Sole Source Procurement) or Subpart 3-5 (Emergency Procurements), as appropriate.

(7) Multiple or Alternate Bids or Proposals. Unless multiple or alternate bids or offers are specifically provided for, the solicitation shall state they will not be accepted. When prohibited, the multiple or alternate bids or offers shall be rejected although a clearly indicated base bid shall be considered for award as though it were the only bid or offer submitted by the bidder or offeror. The provisions of this subsection shall be set forth in the solicitation, and if multiple or alternate bids are allowed, it shall specify their treatment.

3-113 Tie Bids.

(1) Definition. Tie bids are low responsive bids from responsible bidders that are identical in price.

(2) Award. Award shall not be made by drawing lots, except as set forth below, or by dividing business among identical bidders. In the discretion of the purchasing agent, award shall be made in any permissible manner that will discourage tie bids. Procedures which may be used to discourage tie bids include:

(a) where identical low bids include the cost of delivery, award the contract to the bidder farthest from the point of delivery;

(b) award the contract to the identical bidder who received the previous award and continue to award succeeding contracts to the same bidder so long as all low bids are identical;

(c) award to the identical bidder with the earliest delivery date;

(d) award to a Utah resident bidder or for a Utah produced Product where other tie bid(s) are from out of state; or

(e) if price is considered excessive or for other reason such bids are unsatisfactory, reject all bids and negotiate a more favorable contract in the open market.

(f) if no permissible method will be effective in discouraging tie bids and a written determination is made so stating, award may be made by drawing lots.

(3) Record. Records shall be made of all Invitations for Bids on which tie bids are received showing at least the following information:

(a) the Invitation for Bids;

(b) the supply, service, or construction item;

(c) all the bidders and the prices submitted; and

(d) procedure for resolving tie bids.

3-114 Multi-Step Sealed Bidding.

(1) Definition. Multi-step sealed bidding is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the purchasing agency, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered. It

is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtain the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to arrive at technical offers and terms acceptable to the purchasing agency and suitable for competitive pricing.

(2) Use. The multi-step sealed bidding method will be used when the purchasing agent deems it to the advantage of the purchasing agency. Multi-step sealed bidding will thus be used when it is considered desirable.

(a) to invite and evaluate technical offers to determine their acceptability to fulfill the purchase description requirements;

(b) to conduct discussions for the purposes of facilitating understanding of the technical offer and purchase description requirements and, where appropriate, obtain supplemental information, permit amendments of technical offers, or amend the purchase description;

(c) to accomplish Subsections (a) and (b) of this section prior to soliciting priced bids; and

(d) to award the contract to the lowest responsive and responsible bidder in accordance with the competitive sealed bidding procedures.

3-115 Pre-Bid Conferences in Multi-Step Sealed Bidding.

Prior to the submission of unpriced technical offers, a pre-bid conference as contemplated by Section 3-106 (Pre-Bid Conferences) may be conducted by the purchasing agent. The purchasing agent may also hold a conference of all bidders in accordance with Section 3-106 at any time during the evaluation of the unpriced technical offers.

3-116 Procedure for Phase One of Multi-Step Sealed Bidding.

(1) Form. Multi-step sealed bidding shall be initiated by the issuance of an Invitation for Bids in the form required by Section 3-101 (Content of the Invitation for Bids), except as hereinafter provided. In addition to the requirements set forth in Section 3-101, the multi-step Invitation for Bids shall state:

(a) that unpriced technical offers are requested;

(b) whether price bids are to be submitted at the same time as unpriced technical offers; if they are, such price bids shall be submitted in a separate sealed envelope;

(c) that it is a multi-step sealed bid procurement, and priced bids will be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase;

- (d) the criteria to be used in the evaluation of the unpriced technical offers;
- (e) that the purchasing agency, to the extent the purchasing agent finds necessary, may conduct oral or written discussions of the unpriced technical offers;
- (f) that bidders may designate those portions of the unpriced technical offers which contain trade secrets or other proprietary data which are to remain confidential; and
- (g) that the item being procured shall be furnished generally in accordance with the bidder's technical offer as found to be finally acceptable and shall meet the requirements of the Invitation for Bids.

(2) Amendments to the Invitation for Bids. After receipt of unpriced technical offers, amendments to the Invitation for Bids shall be distributed only to bidders who submitted unpriced technical offers and they shall be allowed to submit new unpriced technical offers or to amend those submitted. If, in the opinion of the purchasing agent, a contemplated amendment will significantly change the nature of the procurement, the Invitation for Bids shall be canceled in accordance with Subpart 3-6 (Cancellation of Solicitations) of these regulations and a new Invitation for Bid issued.

(3) Receipt and Handling of Unpriced Technical Offers. Unpriced technical offers shall not be opened publicly nor be disclosed to unauthorized persons. Bidders may request nondisclosure of trade secrets and other proprietary data identified in writing.

(4) Evaluation of Unpriced Technical Offers. The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bids. The unpriced technical offers shall be categorized as:

- (a) acceptable;
- (b) potentially acceptable, that is, reasonably susceptible of being made acceptable; or
- (c) unacceptable. The purchasing agent shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

The purchasing agent may initiate phase two of the procedure if, in the purchasing agent's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without modification or alteration of the offers. If the purchasing agent finds that such is not the case, the purchasing agent shall issue an amendment to the Invitation for Bids or engage in technical discussions as set forth in Subsection (5) of this Section.

(5) Discussion of Unpriced Technical Offers. Discussion of its technical offer may be conducted by the purchasing agent with any bidder who submits an acceptable or potentially acceptable technical offer. During the course of such discussions the purchasing agent shall not disclose any

information derived from one unpriced technical offer to any other bidder. Once discussions are begun, any bidder who has not been notified that its offer has been finally found unacceptable may submit supplemental information modifying or otherwise amending its technical offer at any time until the closing date established by the purchasing agent. Such submissions may be made at the request of the purchasing agent or upon the bidder's own initiative.

(6) Notice of Unacceptable Unpriced Technical Offer. When the purchasing agent determines a bidder's unpriced technical offer to be unacceptable, such officer shall notify the bidder. Such bidders shall not be afforded an additional opportunity to supplement technical offers.

3-117 Mistakes During Multi-Step Sealed Bidding.

Mistakes may be corrected or bids may be withdrawn during phase one;

- (a) before unpriced technical offers are considered;
- (b) after any discussions have commenced under Section 3-118 5) (procedure for Phase One of Multi-Step Sealed Bidding, Discussion of Unpriced Technical Offers); or
- (c) when responding to any amendment of the Invitation for Bids. Otherwise mistakes may be corrected or withdrawal permitted in accordance with Section 3-111 (Mistakes in Bids).

3-118 Carrying Out Phase Two.

(1) Initiation. Upon the completion of phase one, the purchasing agent shall either:

- (a) open price bids submitted in phase one (if price bids were required to be submitted) from bidders whose unpriced technical offers were found to be acceptable; provided, however, that the offers have remained unchanged, and the Invitation for Bids has not been amended; or
- (b) invite each acceptable bidder to submit a price bid.

(2) Conduct. Phase two is to be conducted as any other competitive sealed bid procurement except:

- (a) as specifically set forth in Section 3-114 through Section 3-120 of these regulations; and
- (b) no public notice need be given of this invitation to submit

3-119 Purchase of Items Separately from Construction Contract.

The purchasing agent is authorized to determine whether a supply item or group of supply items shall be included as a part of, or procured separately from, any contract for construction.

3-120 Exceptions to Competitive Sealed Bid Process.

(1) The purchasing agent, head of a purchasing agency or designee may utilize alternative procurement methods (ie. Auctions, repossession sales, negotiation based upon industry indexes) to purchase items such as the following when determined to be more practicable or advantageous to the County.

(a) Used vehicles

(b) Livestock

(2) Documentation of the alternative procurement method utilized shall be part of the contract file.