

UTAH COUNTY PROCUREMENT RULES AND REGULATIONS

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PART 1

DEFINITIONS

Actual Costs means direct and indirect costs which have been incurred for services rendered, supplies delivered, or construction built, as distinguished from allowable costs.

Adequate Price Competition means when competitive sealed proposals are solicited and at least two responsible offerors independently contend for a contract to be awarded to the responsible offeror submitting the lowest evaluated price by submitting priced best and final offers meeting the requirements of the request for proposals. If the foregoing conditions are met, price competition shall be presumed to be "adequate" unless the purchasing agent determines that such competition is not adequate.

Brand Name or Equal Specification means a specification which uses a brand name specification to describe the standard of quality, performance, and other characteristics being solicited, and which invites the submission of equivalent products.

Brand Name Specification means a specification calling for one or more products by manufacturers' names or catalogue numbers.

Business means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

Change Order means a written order signed by the purchasing agent, directing the contractor to suspend work or make changes, which the appropriate clauses of the contract authorize the purchasing agent to order without the consent of the contractor or any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

Chief Purchasing Agent means the purchasing agent for Utah County.

Construction means the process of building, renovating or demolishing any public structure or building, major developmental work, or landscaping of public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

Consultant Services means work, rendered by either individuals or firms who possess specialized knowledge, experience, and expertise to investigate assigned problems or projects and to provide counsel, review, design, development, analysis, or advise in formulating or implementing programs or services or improvements in programs or services, including but not limited to such areas as management, personnel, finance, accounting, planning, and data processing.

Contract means any County agreement for the procurement or disposal of supplies, services, or construction.

Cooperative Purchasing means procurement conducted by, or on behalf of, more than one public procurement unit, or by a public procurement unit with an external procurement unit.

Cost Analysis means the evaluation of cost data for the purpose of arriving at estimates of costs to be incurred, prices to be paid, cost to be reimbursed, or costs actually incurred.

Cost Data means factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

Cost Objectives means a function, organizational subdivision, contract, or any other work unit for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, and similar items.

Cost Reimbursement Contract means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provision of this Chapter, and a fee, if any.

Discussions as used in source selection means negotiation during which the seller or buyer may alter or otherwise change the terms, price or other provisions of the proposed contract. Discussion can be conducted under competitive sealed proposals, sole source, and emergency procurements; such discussion is not permissible under competitive sealed bidding except to the extent in the first phase of multi-step bidding.

Established Catalogue Price means the price included in a catalogue, price list, schedule, or other form that is regularly maintained by a manufacturer or contractor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved. Trade discounts must be recognized in establishing any price.

External Procurement Unit means any buying organization not located in this County which, if located in this County, would qualify as a public procurement unit.

Grant means the furnishing by the County or by any other public or private source of assistance, whether financial or otherwise, to any person to support a program authorized by law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services, or construction; a contract resulting from such an award is not a grant, but a procurement contract.

Invitation for Bids means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

Lease means a contract for the use of equipment or real property under which title does not pass to the purchasing agency.

Local Public Procurement Unit means any political subdivision or institution of higher education of the County or public agency of any subdivision, public authority, education, health, or other institution, and to the extent provided by law, any other entity which expends public funds for the procurement of supplies, services, and construction, but not counties or municipalities. It includes two or more local public procurement units acting under legislation which authorizes intergovernmental cooperation.

Person means any business, individual, union, committee, club, other organization, or group of individuals, not including a County agency or a local public procurement unit.

Preferred bidder means a bidder that is entitled to receive a reciprocal preference under the requirements of this Chapter.

Prequalification for Inclusion on Bidders Lists means determining that a prospective bidder or offeror satisfies the criteria established for receipt of solicitations when and as issued.

Price Analysis means the evaluation of price data without analysis of the separate cost components and profit which may assist in arriving at prices to be paid or costs to be reimbursed.

Price Data means factual information concerning prices for supplies, services, or construction substantially identical to those being procured. Prices in this definition refer to offered or proposed selling prices. The definition refers to data relevant to both prime and subcontract prices.

Procurement means buying, purchasing, renting, leasing, leasing with an option to purchase, or otherwise acquiring any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection, and solicitation of sources, preparation, and award of a contract, and all phases of contract administration.

Professional Services means work rendered by an independent contractor who has a professed knowledge of some department of learning or science used by its practical application to the affairs of others or in the practice of an art founded on it, including but not limited to accounting and auditing, court reporters, X-ray technicians, legal, medical, nursing, education, engineering, actuarial, architecture, veterinarians, and research. The knowledge is founded upon prolonged and specialized intellectual training which enables a particular service to be rendered. The word "professional" implies professed attainments in special knowledge as distinguished from mere skills.

Property means all real property and/or personal property owned by a purchasing agency.

Providers means suppliers of services, which might be termed "personal services", to benefit citizens of the County which services otherwise might be performed by its own employees. For example, the County might contract with a school to conduct a training program for the handicapped. Similarly, the County might contract with persons to provide foster homes for children. It will be necessary to ascertain on a case-by-case basis whether the services to be rendered will involve extended analysis and significant features of judgment.

Public Procurement Unit means either a local public procurement unit or a county public procurement unit.

Purchase Description means the words used in a solicitation to describe the supplies, services, or construction to be purchased, and includes specifications attached to or made a part of the solicitation.

Purchasing Agency means any County department other than the purchasing office which is authorized by this Chapter or its implementing regulations, or by way of delegation from the purchasing agent, to enter into contracts.

Purchasing Agent means the individual duly appointed and qualified to act under the direction of the Board of County Commissioners to negotiate for the purchase of or contract for all supplies and materials required by the County.

Qualified Products List means a list of supplies, services, or construction items described by model or catalogue numbers, which, prior to solicitation, the purchasing agency has determined will meet the applicable specification requirements.

Request for Proposals means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

Responsible Bidder or Offeror means a person who has the capability in all respects to perform fully the contract requirements and who has the integrity and reliability which will assure good faith performance.

Responsive Bidder means a person who has submitted a bid which conforms in all material respects to the Invitation for Bids.

Services means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. It does not include employment agreements or collective bargaining agreements.

Solicitation means an Invitation for Bids, a Request for Proposals, or any other document, such as a request for quotations, issued by the purchasing agency for the purpose of soliciting offers to perform a contract.

Specification means any description of the physical, or functional characteristics, or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

County Agency means any department, division, commission, council, board, bureau, committee, institution, government corporation, or other establishment or official of this County.

County Public Procurement means the purchasing division and any other purchasing division or any other purchasing agency of this County.

Suppliers means prospective bidders or offerors.

Supplies means all property, including but not limited to equipment, materials, and printing.

Surplus Supplies means any supplies that are no longer needed for public use. It includes expendable supplies, scrap materials, and nonexpendable supplies that have completed their useful life cycle.

Using Agency means any County agency which utilizes any supplies, services, or construction procured under the Utah County Procurement Rules and Regulations.

PART 2

PROCUREMENT ORGANIZATION

2-101 Delegation of Authority of the Chief Purchasing Agent.

The purchasing agent may delegate in writing such authority as deemed appropriate to any employees of the office of the purchasing agent or of a purchasing agency, respectively, upon approval of the Board of County Commissioners. Such delegations shall remain in effect unless modified or until revoked in writing.

2-102 Authority to Make Small Purchases.

(1) General. The purchasing agent may delegate to the head of any department (or their authorized agent) the authority to make a purchase expected to be less than \$1,000.00 for supplies and services. Any such delegation shall be in writing and may be limited as the purchasing agent directs.

(2) Purchasing Agencies Shall Make Small Purchases Pursuant to Regulations. Department heads (or their authorized agent) shall exercise such authority as may be delegated, and such small purchases shall be made pursuant to Subpart 3-3 (Small Purchases) of Part 3 (Source Selection and Contract Formation) of these regulations.

2-103 Authority of Purchasing Agents.

The purchasing agent may take any action of a procurement nature to advance economic well-being and efficient operation of the County so long as that action is not in conflict with the Utah County Procurement Rules and Regulations.

2-104 Computer, Furniture, and Telecommunications Equipment

All purchases of computers or computer-related equipment require approval from the Information Systems Department head or his designee as to type and compatibility with the County information systems. All purchases of furniture and telecommunications equipment or telecommunications-related equipment require approval from the Public Works Department head or his designee as to type and compatibility with County structures and/or systems.

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.

PART 3
SOURCE SELECTION AND CONTRACT FORMATION
SUBPART 3-2 -- COMPETITIVE SEALED PROPOSALS

3-201 Use of Competitive Sealed Proposals.

(1) Appropriateness. Competitive sealed proposals may be a more appropriate method for a particular procurement or type of procurement than competitive sealed bidding, after consideration of factors such as:

- (a) whether there may be a need for price and service negotiation;
- (b) whether there may be a need for negotiation during performance of the contract;
- (c) whether the relative skills or expertise of the offerors will have to be evaluated;
- (d) whether cost is only one of several criteria in determining the award;
- (e) whether the conditions of the service, product or delivery conditions are unable to be sufficiently described in the Invitation for Bids; and
- (f) whether the County has defined a requirement and requests the offerors to propose the best method for accomplishing it.

(2) Determinations.

(a) Before a solicitation may be issued for competitive sealed proposals, the purchasing agent shall determine in writing that competitive sealed proposals is a more appropriate method for contracting than competitive sealed bidding.

(b) The purchasing agent may make such determinations by category of supply, service, or construction item rather than by individual procurement. Procurement of the types of supplies, services, or construction so designated may then be made by competitive sealed proposals without making the determination competitive sealed bidding is either not practicable or not advantageous. The purchasing agent may modify or revoke such determination at any time and such determination should be reviewed for current applicability from time to time.

(3) Professional Services. For procurement of professional services, agencies shall submit to bidding procedures wherever practicable through competitive sealed proposals. Examples of professional services difficult to bid are accounting and auditing, court reporters, x-ray technicians, legal, medical, nursing, education, engineering, actuarial, architecture, veterinarians, and research. The purchasing agent or designee may determine that for a given professional service, it is either not practicable or not advantageous for the County to procure the service by

soliciting competitive sealed proposals. In the event of such a determination, the purchasing agent, head of a purchasing agency or designee may elect to utilize an alternative method, which may include, but shall not be limited to, direct negotiations with a qualified provider.

3-202 Content of the Request for Proposals.

The Request for Proposals shall be prepared in accordance with Section 3-101 (Content of the Invitation for Bids) provided that it shall also include:

- (a) a statement that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award, but that proposals may be accepted without such discussions;
- (b) a statement of when and how price should be submitted.
- (c) a statement describing how the proposals will be evaluated, listing the evaluation factors and their relative importance.
- (d) a statement that all proposals are subject to the final review, evaluation and decision by the Board of County Commissioners of Utah County.

3-203 Proposal Preparation Time.

Proposal preparation time shall be set to provide offerors a reasonable time to prepare their proposals. A minimum of 10 working days shall be provided unless a shorter time is deemed necessary for a particular procurement as determined in writing by the purchasing agent.

3-204 Form of Proposal.

The manner in which proposals are to be submitted, including any forms for that purpose, may be designated as a part of the Request for Proposals.

3-205 Public Notice.

Public notice shall be given by distributing the Request for Proposals in the same manner provided for distributing an Invitation for Bids under Section 3-104 (Public Notice).

3-206 Pre-Proposal Conferences.

Pre-proposal conferences may be conducted in accordance with Section 3-106 (Pre-Bid Conferences). Any such conference should be held prior to submission of initial proposals.

3-207 Amendments to Request for Proposals.

Amendments to the Request for Proposals may be made in accordance with Section 3-107 (Amendments to Invitation for Bids) prior to submission of proposals. After submission of

proposals, amendments may be made in accordance with Section 3-118(2) (Procedure for Phase One of Multi-Step Sealed Bidding, Amendments to the Invitation for Bids).

3-208 Modification or Withdrawal of Proposals.

Proposals may be modified or withdrawn prior to the established due date in accordance with Section 3-108 (Pre-Opening Modification or Withdrawal of Bids). For the purposes of this Section and Section 3-209 (Late Proposals, Late Withdrawals, and Late Modifications), the established due date is either the date and time announced for receipt of proposals or receipt of modifications to proposals, if any; or if discussions have begun, it is the date and time by which best and final offers must be submitted, provided that only offerors who submitted proposals by the time announced for receipt of proposals may submit best and final offers.

3-209 Late Proposals, Late Withdrawals and Late Modifications.

Except for modification allowed pursuant to negotiation, any proposal, withdrawal, or modification received after the established due date, as defined in Section 3-208, at the place designated for receipt of proposals is late. No late proposal, late withdrawal, or late modification will be considered unless received before contract award, and the proposal, withdrawal, or modification would have been timely but for the action or inaction of personnel directly serving the procurement activity or lateness otherwise not attributable to the offeror's fault or negligence. The purchasing agent, in consultation with the Utah County Attorney's Office, shall determine whether to accept a late proposal, 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.

3-210 Receipt and Registration of Proposals.

(1) Proposals shall be opened publicly, identifying only the names of the offerors. Proposals and modifications shall be time stamped upon receipt and held in a secure place until the established due date. After the date established for receipt of proposals, a register of proposals shall be open to public inspection and shall include for all proposals the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the supply, service, or construction item offered. Prior to award proposals and modifications shall be shown only to purchasing agency personnel having a legitimate interest in them.

(2) Proposals of the successful offeror(s) shall be open to public inspection for a period of 90 days after award of the contract. Proposals of offerors who are not awarded contracts shall not be open to public inspection.

(3) If the offeror selected for award has requested in writing the non-disclosure of trade secrets and other proprietary data so identified, the head of the agency conducting the procurement or a

designee of such officer shall examine the request in the proposal to determine its validity prior to award of the contract. If the parties do not agree as to the disclosure of data in the contract, the head of the agency conducting the procurement or a designee of such officer shall inform the offeror in writing what portion of the proposal will be disclosed and that, unless the offeror withdraws the proposal it will be disclosed.

3-211 Proposal Discussion with Individual Offerors.

(1) "Offerors" Defined. For the purposes of this Section, the term "offerors" include only those businesses submitting proposals that are acceptable or potentially acceptable. The term shall not include businesses which submitted unacceptable proposals.

(2) Purposes of Discussions. Discussions are held to facilitate and encourage an adequate number of potential contractors to offer their best proposals, by amending their original offers, if needed.

(3) Conduct of Discussions. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. The purchasing agent should establish procedures and schedules for conducting discussions. If during discussions there is a need for clarification or change of the Request for Proposals, it shall be amended to incorporate such clarification or change. See Part 3-2, page 4 of 6.

(4) Best and Final Offers. The purchasing agent shall establish a common time and date for submission of best and final offers. Best and final offers shall be submitted only once unless the purchasing agent makes written determination before each subsequent round of best and final offers demonstrating another round is in the purchasing agency's interest, and additional discussions will be conducted or the purchasing agency's requirements will be changed. Otherwise, no discussion of, or changes in, the best and final offers shall be allowed prior to award. Offerors shall also be informed that if they do not submit a notice of withdrawal or another a best and final offer, their immediate previous offer will be construed as their best and final offer.

3-212 Mistakes in Proposals.

(1) Mistakes Discovered Before the Established Due Date. An offeror may correct mistakes discovered before the time and date established for receipt of proposals by withdrawing or correcting the proposal as provided in Section 3-208 (Modification or Withdrawal of Proposals).

(2) Confirmation of Proposal. When it appears from a review of the proposal before award that a mistake has been made, the offeror should be asked to confirm the proposal. If the offeror alleges mistake, the proposal may be corrected or withdrawn during any discussions that are held or if the conditions set forth in Subsection (4) of this Section are met.

(3) Mistakes Discovered After Receipt But Before Award. This Subsection sets forth to be applied in four situations in which mistakes in proposals are discovered after receipt of proposals but before award.

(a) During Discussions; Prior to Best and Final Offers. Once discussions are commenced with any offeror or after best and final offers are requested, any offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.

(b) Minor Informalities. Minor informalities, unless otherwise corrected by an offeror as provided in this Section, shall be treated as they are under competitive sealed bidding. (See Section 3-111(4) (a) (Mistakes in Bids, Mistakes Discovered After Opening But Before Award).

(c) Correction of Mistakes. If discussions are not held or if the best and final offers upon which award will be made have been received, mistakes may be corrected and the correct offer considered only if:

(i) the mistake and the correct offer are clearly evident on the face of the proposal in which event the proposal may not be withdrawn; or

(ii) the mistake is not clearly evident on the face of the proposal, but the offeror submits proof of evidentiary value which clearly and convincingly demonstrates both the existence of a mistake and the correct offer and such correction would not be contrary to the fair and equal treatment of other offerors.

(d) Withdrawal of Proposals. If discussions are not held, or if the best and final offers upon which award will be made have been received, the offeror may be permitted to withdraw the proposal if:

(i) the mistake is clearly evident on the face of the proposal and the correct offer is not; or

(ii) the offeror submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made but does not demonstrate the correct offer or, if the correct offer is also demonstrated, to allow correction on the basis of such proof would be contrary to the fair and equal treatment of other offerors.

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

3-213 Evaluation of Proposals.

- (1) The Request for Proposals shall state all of the evaluation factors and their relative importance, including price.
- (2) Evaluation. The evaluation shall be based on the evaluation factors set forth in the Request for Proposal. Numerical rating systems may be used but are not required. Factors not specified in the Request for Proposals shall not be considered in determining award of contract.
- (3) The Purchasing Agent shall establish an evaluation committee which shall review the proposals and shall make award recommendations. The requesting organization may submit a list of potential evaluation committee members to the Purchasing Agent for consideration by the Purchasing Agent in establishing the evaluation committee. The committee members should be knowledgeable and have good judgment in the field to which the proposal applies or the need that the procurement item is intended to address. All evaluation committee members will impartially review the submitted proposals to insure a well founded, fair award recommendation and the possibility of a successful contract. No evaluation committee member shall have a conflict of interest with any offeror. The Purchasing Agent may designate an expert, consultant, or other individual to assist the evaluation committee, provided that such expert, consultant, or individual shall not be a member of the evaluation committee and shall not participate in the evaluation scoring.
- (4) Once evaluation committee members are appointed to the evaluation committee, they will not confer with any prospective offerors. If information or clarification is needed as to the RFPs, the prospective offerors are to contact the Purchasing Agent.
- (5) All proposals received shall be evaluated and scored independently by each member of the evaluation committee on the scoring sheets provided by the Purchasing Agent. The evaluation criteria will be based on the information described in the Request for Proposal.
- (6) Final evaluation will take into consideration both written proposals and oral presentation, if any, and must be consistent with the evaluation criteria defined in the Request for Proposal. The award recommendation will be based on the best evaluated proposal and shall constitute only a recommendation to the Board of County Commissioners.
- (7) Committee members may discuss the proposals together, but, each committee member will privately score and/or rank their selection. The score sheets and/or ranking will be turned into the Purchasing Agent for tabulation and disclosure to the full committee.
- (8) The Purchasing Agent shall provide to the Board of County Commissioners the evaluation committee's recommendations, final tabulations and ranking of the offerors' proposals.

3-214 Oral Presentations.

- (1) Oral presentations should be scheduled if clarifications or additional information is necessary. The evaluation committee may decide if they wish to invite the complete list of offerors for oral presentations or only a "short list" of the top proposal scorers. Oral presentations will be conducted with the following directions.

- (a) All members or their representative of the evaluation committee should be present during the presentations at the committee meetings. Interview meetings are to be directed by the committee chair.
- (b) All offerors must be afforded equal opportunity to respond in an oral interview. Time limits for oral presentations will be equal in length.
- (c) No offeror will be given information pertaining to another offeror's proposal, or their present standing in the evaluation process, during the presentation.
- (d) The offeror's original proposal cannot be changed in any aspect at the oral presentation. The oral presentation is only to allow offerors to clarify portions of their proposal and is an extension of their written proposal.

3-215 Award.

- (1) Award of Contract. After taking into consideration the evaluation committee's recommendations, tabulations, and rankings, the Board of County Commissioners shall award the contract to one of the top three ranked offerors, or may elect to reject all proposals. In making its decision, the Board of County Commissioners shall determine which offeror's proposal is in the best interest of the County, after considering all applicable factors.
- (2) Further Negotiations. Notwithstanding the provisions of section 3-215(1), the Board of County Commissioners may make the awarding of a contract subject to further negotiations and modifications deemed to be in the best interest of the County, without a substantial change to the scope of the Request for Proposals, and the award of contract shall be subject to the County and the offeror entering into a contract acceptable to the County.
- (3) Award Documentation. A written determination shall be made showing the basis on which the award was found to be most advantageous to the purchasing agency based on the factors set forth in the Request for Proposals.
- (4) One Proposal Received. If only one proposal is received in response to a Request for Proposals, the purchasing agent may, as such agent deems appropriate, either make an award or, if time permits, resolicit for the purpose of obtaining additional competitive sealed proposals.

3-216 Publicizing Awards.

After a contract is entered into, notice of award shall be available in the purchasing agency's office.

3-217 Exceptions to Competitive Sealed Proposal Process.

- (1) The purchasing agent or designee may determine that for a given request it is either not practicable or not advantageous for the county to procure a commodity or service referenced in 3-201 above by soliciting competitive sealed proposals. When making this determination, the purchasing agent or designee may take into consideration whether the potential cost of preparing, soliciting and evaluating competitive sealed proposals is expected to exceed the benefits normally associated with such solicitations. In the event of such a determination, the purchasing agent or designee may elect to utilize an alternative, more cost effective procurement method, which may include but shall not be limited to direct negotiations with a qualified vendor or contractor.

(2) Documentation of the alternative procurement method selected shall state the reasons for selection and shall be made a part of the contract file.

Part 3

SOURCE SELECTION AND CONTRACT FORMATION

SUBPART 3-3 – SOURCE SELECTION METHOD AND CONTRACT FORMATION

3-301 Authority to Make Purchases:

- (1) Supervisory Authority: The County purchasing agent may use these procedures for the procurement for supplies, services or construction. Subject to the direction and supervision of the County Commission, the purchasing agent shall perform or direct the performance of all such duties as are required by the provisions of this subpart.
- (2) Sole Source: If the supply, service, or construction item is available only from one business, the sole source procurement method set forth in Subpart 3-4 (Sole Source Procurement) of these regulations shall be used.
- (3) Emergency: In a situation which creates a threat to public health, welfare, or safety and there is an immediate and serious need for supplies, services, or construction that cannot be met through normal procurement methods, emergency procurement set forth in Subpart 3-5 (Emergency Procurement) of these regulations shall be used.
- (4) Division of Purchases: Purchases shall not be artificially divided to lower the cost of the purchase thereby avoiding the source selection method(s) as set forth herein.
- (5) Purchase Order Approval: Purchase orders shall be approved pursuant to the County Financial Administration Ordinance, Section 2-1-4(b) of the Utah County Code.
- (6) Written Quotations: All written quotations shall be submitted to the purchasing agent and retained for a period of four (4) years. Each quotation shall include the name of the business and individual offering the quotation, the date received, and the amount quoted. Quotations may be received electronically or telephonically and documented in writing by the county department receiving the quotation according to this section.
- (7) Solicitation Requirement: The purchasing agent is not required to receive a response to each solicitation before completing the procurement so long as the businesses solicited are given a reasonable time, not less than five (5) business days, in which to respond and the purchasing agent determines that the process has been competitive.

3-302 Purchases of Supplies, Services or Construction In Excess of \$2,500:

- (1) Source selection and contract formation shall be accomplished according to the following cost categories:
 - (a) Procurement costing between \$2,501 and \$5,000: No less than three businesses shall be solicited to submit written quotations that include the minimum

specifications established by Utah County. The award shall be made to the responsible offeror with the lowest quotation that meets the specifications.

- (i) An award for supplies under this section 3-302(1) shall be made pursuant to a purchase order.
 - (ii) An award for services or construction under this section 3-302(1) shall be made pursuant to a bilateral contract signed by both parties.
- (b) Procurement costing between \$5,001 and \$50,000: No less than four businesses shall be solicited to submit written quotations that include the minimum specifications established by Utah County. The award shall be made to the responsible offeror with the lowest quotation that meets the specifications.
- (i) An award for supplies between \$5,000 and \$10,000 shall be made pursuant to a purchase order.
 - (ii) An award for services or construction under this section 3-302(3) or for supplies between \$10,001 and \$50,000 shall be made pursuant to a bilateral contract signed by both parties.
- (c) Procurements costing more than \$50,000: Businesses shall be solicited and awards shall be made through the sealed bid or sealed proposal process. Awards will be made pursuant to bilateral contracts signed by both parties.

An approved “Bid/RFP Request Form” must be submitted with the bid documents when the procurement is conducted through the sealed bid or proposal process.

- (2) The purchasing agent may delegate the responsibility of soliciting written quotations back to the department requesting the purchase.
- (3) The requirement of contracting with vendors through purchase orders or bilateral contracts listed within this Subpart 3-3 can be altered if recommended by the purchasing agent and the Utah County Attorney’s Office and approved by the Utah County Board of Commissioners; such recommendations and approval shall be in writing and maintained by the purchasing agent.

3-303 Small Purchases of \$2,500 or Less: County departments may make small cost purchases of \$2,500 or less without receiving competitive quotations. The purchasing agent may adopt procedures that provide for obtaining adequate competition, for making records to properly account for funds and to facilitate auditing. Such purchases shall be awarded pursuant to a purchase order.

PART 3

SOURCE SELECTION AND CONTRACT FORMATION

SUBPART 3-4 -- SOLE SOURCE PROCUREMENT

3-401 Conditions For Use of Sole Source Procurement.

Sole source procurement shall be used only if a requirement is reasonably available from a single supplier. A requirement for a particular proprietary item does not justify a sole source procurement if there is more than one potential bidder or offeror for that item.

Examples of circumstances which could necessitate sole source procurement are:

(1) where the compatibility of equipment, accessories, replacement parts, or service is the paramount consideration;

(2) where a sole supplier's item is needed for trial use or testing;

(3) procurement of items for resale;

(4) procurement of public utility services.

The determination as to whether a procurement shall be made as a sole source shall be made by the purchasing agent. Each request shall be submitted in writing by the using agency. Such officer may specify the application of such determination and its duration. In cases of reasonable doubt, competition should be solicited. Any request by a using agency that a procurement be restricted to one potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.

3-402 Negotiation in Sole Source Procurement.

The purchasing agent shall conduct negotiations, as appropriate, as to price, delivery, and terms.

3-403 Unsolicited Offers.

(1) Definition. An unsolicited offer is any offer other than one submitted in response to a solicitation.

(2) Processing of Unsolicited Offers. If a purchasing agency that receives an unsolicited offer is not authorized to enter into a contract for the supplies or services offered, the head of such agency shall forward the offer to the purchasing agent who has authority with respect to evaluation, acceptance, and rejection of such unsolicited offers.

(3) Conditions for Consideration. To be considered for evaluation an unsolicited offer;

(a) must be sufficiently detailed to allow a judgment to be made concerning the potential utility of the offer to the purchasing agency; and

(b) may be subject to testing under terms and conditions specified by the agency.

PART 3

SOURCE SELECTION AND CONTRACT FORMATION

SUBPART 3-5 -- EMERGENCY PROCUREMENTS

3-501 Definition of Emergency Conditions.

An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reasons of floods, epidemics, riots, equipment failures, or such other reasons as may be determined by the purchasing agent or designee. The existence of such an emergency condition creates an immediate and serious need for supplies, services, or construction that cannot be met through normal procurement methods.

3-502 Scope of Emergency Procurements.

Emergency procurement shall be limited to only those supplies, services, or construction items necessary to meet the emergency.

3-503 Authority to Make Emergency Procurements.

The purchasing agent may delegate in writing to any purchasing agency authority to make emergency procurements of up to an amount set forth in the delegation.

3-504 Source Selection Methods.

(1) General. The source selection method used shall be selected with a view to the end of assuring that the required supplies, services, or construction items are procured in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained.

(2) After Unsuccessful Competitive Sealed Bidding. Competitive sealed bidding is unsuccessful when bids received pursuant to an Invitation for Bids are unreasonable, noncompetitive, or the low bid exceeds available funds as certified by the appropriate fiscal officer, and time or other circumstances will not permit the delay required to resolicit competitive sealed bids. If emergency conditions exist after or are brought about by an unsuccessful attempt to use competitive sealed bidding, an emergency procurement may be made.

3-505 Determination of Emergency Procurement.

The purchasing agent or the agency official responsible for procurement shall make a written determination stating the basis for an emergency procurement and for the selection of the particular supplier. Such determination shall be sent promptly to the purchasing agent.

PART 3

SOURCE SELECTION AND CONTRACT FORMATION

SUBPART 3-6 -- RESPONSIBILITY

3-601 Standards of Responsibility.

(1) Standards. Amount factors to be considered in determining whether the standard of responsibility has been met are whether a prospective contractor has:

(a) available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate capability to meet all contractual requirements;

(b) a satisfactory record of integrity;

(c) qualified legally to contract with the purchasing agency; and

(d) unreasonably failed to supply any necessary information in connection with the inquiry concerning responsibility.

Nothing herein shall prevent the procurement office from establishing additional responsibility standards for a particular procurement, provided that these additional standards are set forth in the solicitation.

(2) Information Pertaining To Responsibility. A prospective contractor shall supply information requested by the purchasing agent concerning the responsibility of such contractor. If such contractor fails to supply the requested information, the purchasing agent shall base the determination of responsibility upon any available information or may find the prospective contractor nonresponsible if such failure is unreasonable.

3-602 Ability to Meet Standards.

The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request;

(1) evidence that such contractor possesses such necessary items;

(2) acceptable plans to subcontract for such necessary items; or

(3) a documented commitment from, or explicit arrangements with, a satisfactory source to provide the necessary items.

3-603 Written Determination of Nonresponsibility Required.

If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the purchasing agent. The determination shall be made part of the procurement file.

PART 3

SOURCE SELECTION AND CONTRACT FORMATION

SUBPART 3-7 -- TYPES OF CONTRACTS

3-701 Policy Regarding Selection of Contract Types.

(1) General. The selection of an appropriate contract type depends on factors such as the nature of the supplies, services, or construction to be procured, the uncertainties which may be involved in contract performance, and the extent to which the purchasing agency or the contractor is to assume the risk of the cost of performance of the contract. Contract types differ in the degree of responsibility assumed by the contractor for the costs of performance and the amount and kind of profit incentive offered the contractor to achieve or exceed specified standards or goals.

Among the factors to be considered in selecting any type of contract are:

(a) the type and complexity of the supply, service, or construction item being procured;

(b) the difficulty of estimating performance costs such as the inability of the purchasing agency to develop definitive specifications, to identify the risks to the contractor inherent in the nature of the work to be performed, or otherwise to establish clearly the requirements of the contract;

(c) the administrative costs to both parties;

(d) the degree to which the purchasing agency must provide technical coordination during the performance of the contract;

(e) the effect of the choice of the type of contract on the amount of competition to be expected;

(f) the stability of material or commodity market prices or wage levels;

(g) the urgency of the requirement;

(h) the length of contract performance; and

(i) federal requirements.

The purchasing agency should not contract in a manner that would place an unreasonable economic risk on the contractor, since such action would tend to jeopardize satisfactory performance on the contract.

(2) Use of Unlisted Contract Types. The provisions of this subpart list and define the principal contract types. In addition, any other type of contract, except cost-plus-a-percentage-of-cost, may be used provided the purchasing agent determines in writing that such use is in the purchasing agency's best interest.

3-702 Fixed-Price Contracts.

(1) General. A fixed-price contract is the preferred and generally utilized type of contract. A fixed-price contract places responsibility on the contractor for the delivery of the product or the complete performance of the services or construction in accordance with the contract terms at a price that may be firm or subject to contractually specified adjustments. The fixed-price contract is appropriate for use when there is a reasonably definitive requirement, as in the case of construction or standard commercial products. The use of a fixed-price contract when risks are unknown or not readily measurable in terms of cost can result in inflated prices and inadequate competition; poor performance, disputes, and claims when performance proves difficult; or excessive profits when anticipated contingencies do not occur.

(2) Firm Fixed-Price Contract. A firm fixed-price contract provides a price that is not subject to adjustment.

(3) Fixed-Price Contract With Price Adjustment.

(a) A fixed-price contract with price adjustment provides for variation in the contract price under special conditions defined in the contract, other than customary provisions authorizing price adjustments due to modifications to the work. The formula or other basis by which the adjustment in contract price can be made shall be specified in the solicitation and the resulting contract. However, clauses providing for most-favored-customer prices for the purchasing agency, that is, the price to the purchasing agency will be lowered to the lowest priced sales to any other customer made during the contract period, shall not be used. Examples of conditions under which adjustments may be provided in a fixed-price contracts are:

(i) changes in the contractor's labor contract rates (such as in contracts for coal;)

(ii) changes due to rapid and substantial price fluctuations, which can be related to an accepted index (such as contracts for gasoline, heating oils, and dental gold alloys); and

(iii) when a general price change alters the base price (such as a change in a manufacturer's published price list or posted price to which a fixed discount is applied pursuant to the contract to determine the contract price).

(b) If the contract permits unilateral action by the contractor to bring about the condition under which a price increase may occur, the contract shall reserve to the purchasing agency the right to reject the price increase and terminate the contract without cost or damages. Notice of such price increase shall be given by the contractor in the manner and within such time as is specified in the contract.

3-703 Cost-Reimbursement Contracts.

(1) General. The cost-reimbursement contract provides for payment to the contractor of allowable costs incurred in the performance of the contract as determined in accordance with Subpart 3-7 (Cost Principles) of these regulations and provided in the contract. This type of contract establishes at the outset an estimated cost for the performance of the contract and a dollar ceiling which the contractor may not exceed without prior approval of subsequent ratification by the purchasing agent and, in addition, may provide for payment of a fee. The contractor agrees to perform as specified in the contract until the contract is completed or until the costs reach the specified ceiling, whichever occurs first.

This contract type is appropriate when the uncertainties involved in contract performance are of such magnitude that the cost of contract performance cannot be estimated with sufficient reasonableness to permit use of any type of fixed-price contract. In addition, a cost-reimbursement contract necessitates appropriate monitoring by purchasing agency personnel during performance so as to give reasonable assurance that the objectives of the contract are being met. It is particularly suitable for research, development, and study-type contracts.

(2) Determination Prior To Use. A cost-reimbursement contract may be used only when the purchasing agent determines in writing that:

(a) such a contract is likely to be less costly to the purchasing agency than any other type or that it is impracticable to obtain otherwise, the supplies, services, or construction;

(b) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and

(c) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

(3) Cost Contract. A cost contract provides that the contractor will be reimbursed for allowable costs incurred in performing the contract.

(4) Cost-Plus-Fixed-Fee Contract. This is a cost-reimbursement type contract which provides for payment to the contractor of an agreed fixed fee in addition to reimbursement of allowable, incurred costs. The fee is established at the time of contract award and does not vary whether the actual cost of contract performance is greater or less than the initial estimated cost established for such work. Thus, the fee is fixed but not the contract amount because the final contract amount will depend on the allowable costs reimbursed. The fee is subject to adjustment only if the contract is modified to provide for an increase or decrease in the work specified in the contract.

3-704 Cost Incentive Contracts.

(1) General. Cost incentive contracts provide for the sharing of cost risks between the purchasing agency and the contractor. This type of contract provides for the reimbursement to the contractor of allowable costs incurred up to a ceiling amount and establishes a formula whereby the contractor is rewarded for performing at less than target cost (that is, the parties' agreed best estimate of the cost of performing the contract) or is penalized if it exceeds target cost. Profit or fee is dependent on how effectively the contractor controls cost in the performance of the contract.

(2) Fixed-Price Cost Incentive Contract.

(a) Description. In a fixed-price cost incentive contract, the parties establish at the outset a target cost, a target profit (that is, the profit which will be paid if the actual cost of performance equals the target cost), a cost-sharing formula which provides a percentage increase or decrease of the target profit depending on whether the cost of performance is less than or exceeds the target cost, and a ceiling price. After performance of the contract, the actual cost of performance is arrived at based on the total incurred allowable cost as determined in accordance with Subpart 3-7 (Cost Principles) of these regulations and as provided in the contract. The final contract price is then established in accordance with the cost-sharing formula using the actual cost of performance. The final contract price may not exceed the ceiling price. The contractor is obligated to complete performance of the contract, and, if actual cost exceeds the ceiling price, the contractor suffers loss.

(b) Objectives. The fixed-price cost incentive contract serves three objectives. It permits the establishment of a firm ceiling price for performance of the contract which takes into account uncertainties and contingencies in the cost of performance. It motivates the contractor to perform the contract economically since cost is in inverse relation to profit; the lower the cost, the higher the profit. It provides a flexible pricing mechanism for establishing a cost sharing responsibility between the purchasing agency and contractor depending on the nature of the supplies, services, or construction being procured, the length of the contract performance, and the performance risks involved.

(3) Cost-Plus Contract with Cost Incentive Fee. In a cost-plus contract with cost incentive fee, the parties establish at the outset a target cost; a target fee; a cost-sharing formula for increase or decrease of fee depending on whether actual cost of performance is less than or exceeds the target cost, with maximum and minimum fee limitations; and a cost ceiling which represents the maximum amount which the purchasing agency is obligated to reimburse the contractor. The contractor continues performance until the work is complete or costs reach the ceiling specified in the contract, whichever first occurs. After performance is complete or costs reach the ceiling, the total incurred, allowable costs reimbursed in accordance with Subpart 3-7 (Cost Principles) of these regulations and as provided in the contract are applied in the cost-sharing formula to establish the incentive fee payable to the contractor. This type contract gives the contractor a stronger incentive to efficiently manage the contract than a stronger incentive to efficiently manage the contract than a cost-plus-fixed-fee contract provides.

(4) Determinations Required. Prior to entering into any cost incentive contract, the purchasing agent shall make the written determination required by Subsections 3-703(2)(b) and (c) (Cost-Reimbursement Contracts, Determination Prior to Use) of these regulations. In addition, prior to entering any cost-plus contract with cost incentive fee, the purchasing agent shall include in such written determination the determination required by Subsection 3-703(2)(a) of these regulations.

3-705 Performance Incentive Contracts.

In a performance incentive contract, the parties establish at the outset a pricing basis for the contract, performance goals, and a formula for increasing or decreasing the compensation if the specified performance goals are exceeded or not met. For example, early completion may entitle the contractor to a bonus while late completion may entitle the purchasing agency to a price decrease.

3-706 Time and Materials Contracts; Labor Hour Contracts.

(1) Time and Materials Contracts. Time and materials contracts provide for payment for materials at cost and labor performed at an hourly rate which includes overhead and profit. These contracts provide no incentives to minimize costs or effectively manage the contract work. Consequently all such contracts shall contain a stated cost ceiling and shall be entered into only after the purchasing agent determines in writing that:

(a) personnel have been assigned to closely monitor the performance of the work; and

(b) no other type of contract will suitably serve the purchasing agency's purpose.

(2) Labor Hour Contracts. A labor hour contract is the same as a time and materials contract except the contractor supplies no material. It is subject to the same considerations, and the purchasing agent shall make the same determinations before it is used.

3-707 Definite Quantity and Indefinitely Quantity Contracts.

(1) Definite Quantity. A definite quantity contract is a fixed-price contract that provides for delivery of a specified quantity of supplies or services either at specified times or when ordered.

(2) Indefinite Quantity. An indefinite quantity contract is a contract for an indefinite amount of supplies or services to be furnished as ordered that establishes unit prices of a fixed-price type. Generally an approximate quantity or the best information available is stated in the solicitation. The contract may provide a minimum quantity the purchasing agency is obligated to order and may also provide for a maximum quantity provision that limits the purchasing agency's obligation to order. The time of performance of an indefinite quantity contract may be extended upon agreement of the parties provided the extension is for 90 days or less and the purchasing agent determines in writing that it is not practical to award another contract at the time of such extension.

(3) Requirements Contracts. A requirements contract is an indefinite quantity contract for supplies or services that obligates the purchasing agency to order all the actual, normal requirements of designated using agencies during a specified period of time; and for the protection of the purchasing agency and the contractor. Invitations for Bids and resulting requirements contracts shall include such a provision. However, the purchasing agency may reserve in the solicitation and in the resulting contract the right to take bids separately if a particular quantity requirement arises which exceeds an amount specified in the contract. Requirements contracts shall contain an exemption from ordering under the contract when the purchasing agent approves a finding that the supply or service available under the contract will not meet a nonrecurring, special need of the purchasing agency.

3-708 Progressive and Multiple Awards.

(1) Progressive Award. A progressive award is an award of portions of a definite quantity requirement to more than one contractor. Each portion is for a definite quantity and the sum of the portions is the total definite quantity procured. A progressive award may be in the purchasing agency's best interest when awards to more than one bidder or offeror for different amounts of the same item are needed to obtain the total quantity or the time or times of delivery required.

(2) Multiple Award. A multiple award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror, and the purchasing agency is obligated to order all of its actual, normal requirements for the specified supplies or services from those contractors. A multiple award may be in the purchasing agency's best interest when award to two or more bidders or offerors for similar products is needed for adequate delivery, service, or availability, or for product compatibility. In making a multiple award, care shall be exercised to protect and promote the principles of competitive solicitation. Multiple awards shall not be made when a single award will meet the purchasing agency's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business, making available product or supplier selection to allow for user preference, or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of suppliers necessary to meet the valid

requirements of using agencies. All eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the requirements of such users that can be met under the contract be obtained in accordance with the contract, provided, that:

(a) the purchasing agency shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds an amount specified in the contract; or

(b) the purchasing agency shall reserve the right to take bids separately if the purchasing agent approves a finding that the supply or service available under the contract will not meet a nonrecurring special need of the agency.

(3) Intent to Use. If a progressive or multiple award is anticipated prior to issuing a solicitation, the method of award shall be stated in the solicitation.

3-709 Leases.

(1) Use. A lease may be entered into provided:

(a) it is in the best interest of the purchasing agency;

(b) all conditions for renewal and costs of termination are set forth in the lease; and

(c) the lease is not used to avoid a competitive procurement.

(2) Competition. Lease and lease-purchase contracts are subject to the requirements of competition which govern the procurement of supplies.

(3) Lease With Purchase Option. A purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive bidding or competitive proposals, unless the requirement can be met only by the supply or facility being leased as determined in writing by the purchasing agent. Before exercising such an option, the purchasing agent shall:

(a) investigate alternative means of procuring comparable supplies or facilities; and

(b) compare estimated costs and benefits associated with the alternative means and the exercise of the option, for example, the benefit of buying new state of the art data processing equipment compared to the estimated, initial savings associated with exercise of a purchase option.

3-710 Multi-Year Contracts: Installment Payments.

(1) Use. A contract may be entered into which extends beyond the current fiscal period provided any obligation for payment in a succeeding fiscal period is subject to the availability of funds therefore.

(2) Termination. A multi-year contract may be terminated without cost to the purchasing agency by reason of unavailability of funds for the purpose or for lack of performance by the contractor. Termination for other reason shall be as provided by the contract.

(3) Installment Payments. Supply contracts may provide for installment purchase payments, including interest charges, over a period of time. Installment payments, however, should be used judiciously in order to achieve economy and not to avoid budgetary restraints, and shall be justified in writing by the head of the using agency. Heads of using agencies shall be responsible for ensuring that statutory or other prohibitions are not violated by use of installment provisions and that all budgetary or other required prior approvals are obtained. No such agreement shall be used unless provision for installment payments is included in the solicitation document.

3-711 Contract Option.

(1) Provision. Any contract subject to an option for renewal, extension, or purchase, shall have had such provision included in the solicitation. When such a contract is awarded by competitive sealed bidding, exercise of the option shall be at the purchasing agency's discretion only, and not subject to agreement or acceptance by the contractor.

(2) Exercise of Option. Before exercising any option for renewal, extension, or purchase, the purchasing agent should attempt to ascertain whether a competitive procurement is practical, in terms of pertinent competitive and cost factors, and would be more advantageous to the purchasing agency than renewal or extension of the existing contract.

PART 3

SOURCE SELECTION AND CONTRACT FORMATION

SUBPART 3-8 -- COST OR PRICING DATA AND ANALYSIS; AUDITS

3-801 Scope.

This subpart sets forth the pricing policies which are applicable to contracts of any type and any price adjustments thereunder when cost or pricing data are required to be submitted.

3-802 Requirements for Cost or Pricing Data.

(1) Submission of Cost or Pricing Data - Required. Cost or pricing data shall be required in support of a proposal leading to:

(a) the pricing of any contract expected to exceed \$100,000 to be awarded by competitive sealed proposals or sole source procurement; or

(b) the pricing of any adjustment to any contract, including a contract, awarded by competitive sealed bidding, whether or not cost pricing data was required in connection with the initial pricing of the contract, as requested by the purchasing agent. However, this requirement shall not apply when unrelated and separately priced adjustments for which cost or pricing data would not be required are consolidated for administrative convenience.

(2) Submission of Cost or Pricing Data - Permissive. After making determination that circumstances warrant such action, the purchasing agent may require the offeror or contractor to submit cost or pricing data in any other situation except where the contract award is made pursuant to competitive sealed bidding. Generally, cost or pricing data should not be required where the contract or modification is less than \$2,000. Moreover, when less than complete cost analysis (for example, analysis of only specific factors) will provide a reasonable pricing result on awards or for change orders without the submission of a complete cost or pricing data, the purchasing agent shall request only that data considered adequate to support the limited extent of the cost analysis needed and need not require certification.

(3) Exceptions. Cost or pricing data need not be submitted and certified:

(a) where the contract price is based on:

(i) adequate price competition;

(ii) established catalog prices or market prices, if trade discounts are reflected in the prices; or

(iii) prices set by law or regulation; or

(b) when the purchasing agent determines in writing that the requirements for submitting cost or pricing data may be waived and the reasons for such waiver are stated in the determination. A copy of such determination shall be kept in the contract file and made available to the public upon request.

If, after cost or pricing data were initially requested and received, it is determined that adequate price competition does exist, the data need not be certified.

If, despite the existence of an established catalog price or market price, the purchasing agent considers that a price appears unreasonable, cost or pricing data may be requested. Where the reasonableness of the price can be assured by limited data pertaining to the differences in the item or services, requests should be so limited.

3-803 Submission of Cost or Pricing Data and Certification.

Cost or pricing data shall be submitted to the purchasing agent at the time and in the manner prescribed in these regulations or as otherwise from time to time prescribed by the purchasing agent. When the purchasing agent requires the offeror or contractor to submit cost or pricing data in support of any proposal, such data shall either be actually submitted or specifically identified in writing. When cost or pricing data is required, the data is to be submitted prior to beginning price negotiation and the offeror or contractor is required to keep such submission current throughout the negotiations. The offeror or contractor shall certify, as soon as practicable after agreement is reached on price, that the cost or pricing data submitted is accurate, complete, and current as of a mutually determined date prior to reaching agreement. Certification shall be made using the certificate set forth in Section 3-804 of this Subpart. A refusal by the offeror to supply the required data shall be referred to the purchasing agent whose duty shall be to determine in writing whether to disqualify the noncomplying offeror, to defer award pending further investigation, or to enter into the contract. A refusal by a contractor to submit the required data to support a price adjustment shall be referred to the purchasing agent who shall determine in writing whether to further investigate the price adjustment, not to allow any price adjustment, or to set the amount of the price adjustment.

3-804 Certificate of Current Cost or Pricing Data.

(1) Form of Certificate. When cost or pricing data must be certified, the certificate set forth below shall be included in the contract file along with any award documentation required under these regulations. The offeror or contractor shall be required to submit the certificate as soon as practicable after agreement is reached on the contract price or adjustment.

CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, cost or pricing data as defined in the Utah Procurement Regulations submitted, either actually or by specific identification in writing, to the purchasing agent in support of . . .*, are accurate, complete, and current as of (date) (month) (year) . . .**

This certification includes the cost or pricing data supporting any advance agreement(s) between the offeror and the purchasing agency which are part of the proposal.

Firm

Name

Title

Date of Execution ****

(End of Certificate)

*Describe the proposal, quotation, request for price adjustment of other submission involved, giving appropriate identifying number

(e.g., RFP No.).

**The effective date shall be the date when price negotiations were concluded and the contract price was agreed to. The responsibility of the offeror or contractor is not limited by the personal knowledge of the offeror's or contractor's negotiator if the offeror or contractor had information reasonably available at the time of agreement, showing that the negotiated price is not based on accurate, complete, and current data.

***This date should be as close as practical to the date when the price negotiations were concluded and the contract price was agreed to.

(2) Limitation of Representation. Because the certificate pertains to cost or pricing data, it is not to be construed as a representation as to the accuracy of the offeror's or contractor's judgment on the estimated portion of future costs or projections. It does, however, apply to the data upon which the offeror's or contractor's judgment is based. A certificate of current cost or pricing data is not a substitute for examination and analysis of the offeror's or contractor's proposal.

(3) Inclusion of Notice and Contract Clause. Whenever it is anticipated that a certificate of current cost or pricing data may be required, a clause giving notice of this requirement shall be included in the solicitation. If such a certificate is required, the contract shall include a clause giving the purchasing agency a contract right to a price adjustment, that is, to a reduction in the price to what it would have been if the contractor had submitted accurate, complete, and current data.

(4) Exercise of option. The exercise of an option at the price established in the initial negotiation in which certified cost or pricing data were used does not require recertification or further submission of data.

3-805 Defective Cost or Pricing Data.

(1) Overstated Cost or Pricing Data. If certified cost or pricing data is subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the purchasing agency shall be entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is assumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee; therefore, unless there is a clear indication that the defective data were not used or relied upon, the price should be reduced in such amount. In establishing that the defective data caused an increase in the contract price, the purchasing agent is not expected to reconstruct the negotiation by speculating as to what would have been the mental attitudes of the negotiating parties if the correct data had been submitted at the time of agreement on price.

(2) Understated Cost or Pricing Data. In determining the amount of an adjustment, the contractor shall be entitled to an adjustment for any understated cost or pricing data submitted in support of price negotiations for the same pricing action up to the amount of the purchasing agency's claim for over-stated cost or pricing data arising out of the same pricing action.

(3) Dispute as to Amount. If the contractor and the purchasing agent cannot agree as to the amount of adjustment due to defective cost or pricing data, the purchasing agent shall set an amount in accordance with Subsections 3-805(1) and 3-805(2) of this Subpart.

3-806 Price Analysis Techniques.

Price analysis is used to determine if a price is reasonable and acceptable. It involves a comparison of the prices for the same or similar items or services. Examples of price analysis criteria include but are not limited to:

- (1) price submissions of other prospective bidders or offerors;
- (2) prior price quotations and contract prices charged by any bidder, offeror, or contractor;
- (3) prices published in catalogs or price lists; and

(4) prices available on the open market.

In making such analysis, consideration must be given to any differing delivery factors and contractual provisions, terms and conditions.

3-807 Cost Analysis Techniques.

(1) General. Cost analysis includes the appropriate verification of cost or pricing data, and the use of this data to evaluate:

(a) specific elements of costs;

(b) the necessity for certain costs;

(c) the reasonableness of amounts estimated for the necessary costs;

(d) the reasonableness of allowances for contingencies;

(e) the basis used for allocation of indirect costs;

(f) the appropriateness of allocations of particular indirect costs to the proposed contract; and

(g) the reasonableness of the total cost or price.

(2) Evaluations. Evaluations of cost or pricing data should include comparisons of costs and prices of an offeror's cost estimates with those of other offerors and any independent price and cost estimates. They shall also include consideration of whether such costs are reasonable and allocable under these regulations.

3-808 Audit.

(1) The purchasing agent may, at reasonable times and places, audit or cause to be audited, the books and records of a contractor prospective contractor, subcontractor, or prospective subcontractor which are related to:

(a) the cost of pricing data submitted hereunder;

(b) a contract, including subcontracts, other than a firm fixed-price contract, awarded pursuant to these regulations and the Utah Procurement Code.

(2) An audit performed by an auditor selected or approved by the purchasing agent shall be submitted containing at least the following information:

(a) for cost and pricing data audits:

(i) a description of the original proposal and all submissions of cost or pricing data;

(ii) an explanation of the basis and the method used in preparing the proposal;

(iii) a statement identifying any cost or pricing data not submitted but examined by the auditor which has a significant affect on the proposed cost or price;

(iv) a description of any deficiency in the cost or pricing data submitted and an explanation of its affect on the proposal;

(v) a statement summarizing those major points where there is a disagreement as to the cost or pricing data submitted; and

(vi) a statement identifying any information obtained from other sources;

(b) the number of invoices or reimbursement vouchers submitted by the contractor or subcontractor for payment;

(c) the use of federal assistance funds; or

(d) the fluctuation of market prices affecting the contract.

The scope of the audit may be limited by the purchasing agent.

(3) The contract audits, the scope of the report will depend on the scope of the audit ordered. However, the report should contain specific reference to the terms of the contract to which the audited data relates and a statement of the degree to which the auditor believes the audited data and evidence compliance with those terms.

3-809 Retention of Books and Records.

(1) Relating to Cost and Pricing Data. Any contractor who receives a contract, change order, or contract modification for which cost or pricing data is required shall maintain such books and records that relate to such cost or pricing data for three years from the date of final payment under the contract.

(2) Relating to Other than Firm Fixed-Price Contracts. Books and records that relate to a contract in excess of \$25,000, including subcontracts, other than a firm fixed-price contract, shall be maintained:

(a) by a contractor, for three years from the date of final payment under the contract; and

(b) by a subcontractor, for three years from the date of final payment under the subcontract.

PART 3

SOURCE SELECTION AND CONTRACT FORMATION

SUBPART 3-9 -- PLANT OR SITE INSPECTION:

INSPECTION OF SUPPLIES OR SERVICES

3-901 Inspection of Plant or Site.

Circumstances under which the purchasing agency may perform inspections include, but are not limited to, inspections of the contractor's plant or site in order to determine:

(1) whether the standards set forth in Section 3-601 (Standards of Responsibility) have been met or are capable of being met; and

(2) if the contract is being performed in accordance with its terms.

3-902 Access to Plant or Place of Business.

The purchasing agency may enter a contractor's or subcontractor's plant or place of business to:

(1) inspect supplies or services for acceptance by the purchasing agency pursuant to the terms of a contract;

(2) audit cost or pricing data or audit the books and records of any contractor or subcontractor pursuant to Section 63-56-28 Subsection (5) (Right to Audit Records) of the Utah Procurement Code; and

(3) investigate in connection with an action to debar or suspend a person from consideration for award of contracts pursuant to Section 63-56-48 (Authority to Debar or Suspend) of the Utah Procurement Code.

3-903 Inspection of Supplies and Services.

(1) Provisions for Inspection. Contracts may provide that the purchasing agency may inspect supplies and services at the contractor's or subcontractor's facility and perform tests to determine whether they conform to solicitation requirements or, after award, to contract requirements, and are therefore acceptable. Such inspections and tests shall be conducted in accordance with the terms of the solicitation and contract.

(2) Trial Use and Testing. The purchasing agent is authorized to establish operational procedures governing the testing and trial use of various equipment, and materials, and supplies by any using agency, and the relevance and use of resulting information to specifications and procurements.

3-904 Conduct of Inspections.

(1) Inspectors. Inspections or tests shall be performed so as not to unduly delay the work of the contractor or subcontractor. No inspector may change any provision of the specifications or the contract without written authorization of the purchasing agent. The presence or absence of an inspector shall not relieve the contractor or subcontractor from any requirements of the contract.

(2) Location. When an inspection is made in the plant or place of business of a contractor or subcontractor, such contractor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.

(3) Time. Inspection or testing of supplies and services performed at the plant or place of business of any contractor or subcontractor shall be performed at reasonable times.

3-905 Inspection of Construction Projects.

On-site inspection of construction shall be performed in accordance with the terms of the contract.

PART 4

SPECIFICATIONS

SUBPART 4-1 -- GENERAL PROVISIONS

4-101 General Purpose and Policies.

(1) Purpose. Specifications shall be drafted with the objective of clearly describing the purchasing agency's requirements and of encouraging competition. The purpose of a specification is to serve as a basis for obtaining a supply, service, or construction item adequate and suitable for the purchasing agency's needs in a cost effective manner, taking into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs.

(2) Use of Functional or Performance Descriptions. Specifications shall to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the purchasing agency. To facilitate the use of such criteria, using agencies shall endeavor to include as a part of their purchase requisitions the principal functional or performance needs to be met. It is recognized, however, that the preference for use of functional or performance specifications is primarily applicable to the procurement of supplies and services. Such preference is often not practicable in construction, apart from the procurement of supply-type items for a construction project.

(3) Preference for Commercially Available Products. It is the general policy that requirements be satisfied by standard commercial products whenever practicable.

4-102 Availability of Documents.

Except for testing and confidential data, specifications and any written determination or other document generated or used in the development of a specification shall be available for public inspection.

4-103 Emergency Authority.

In the event of an emergency, as determined by the purchasing agent, the purchasing agency may procure by any reasonable means, with any available specifications, without regard to the provision of these regulations.

4-104 Procedures for the Development of Specifications.

(1) Provisions of General Application.

(a) Application of Section. This Section applies to all persons who may prepare a specification.

(b) Specification of Alternates May be Included. A specification may provide alternate descriptions of supplies, services, or construction items where two or more design, functional, or performance criteria will satisfactorily meet the purchasing agency's requirements.

(c) Contractual Requirements Not to Be Included. To the extent feasible, a specification shall not include any solicitation or contract term or condition such as a requirement for time or place of bid opening, time of delivery, payment, liquidated damages, or qualification of bidders.

(d) Use of Existing Specifications. If a specification for a common or general use item has been developed in accordance with Subsection (2)(a) of this section or a qualified products list has been developed in accordance with Subsection (2)(d) of this Section for a particular supply, service, or construction item, or need, it shall be used unless the purchasing agent makes a written determination that its use is not in the purchasing agency's best interest and that another specification shall be used.

(e) The purchasing agent should provide for the periodic review of specifications to determine whether any existing specification needs revision, or a new specification is needed to reflect changes in:

(i) the state of the art;

(ii) the characteristics of the available supplies, services, or construction items; or

(iii) needs of the using agency.

(f) The purchasing agent may allow others to prepare specifications for the purchasing agency's use in making procurements when there will be no substantial conflict of interest involved and it is otherwise in the best interests of the purchasing agency as determined by the purchasing agent.

(2) Special Additional Procedures.

(a) Specifications for Common or General Use Items.

(i) Preparation and Utilization. A standard specification for common or general use shall, to the extent practicable, be prepared and utilized when a supply, service, or construction item is used in common by several using agencies or used repeatedly by one using agency, and the characteristics of the supply, service, or construction item as commercially produced or provided remain relatively stable while the frequency or volume of procurements is significant, or where the purchasing agency's recurring needs require uniquely designed or specially produced items.

(ii) Final Approval. Final approval of a proposed specification for a common or general use item shall be given only by the purchasing agent.

(iii) Revisions and Cancellations. All revisions to or cancellations of specifications for common or general use items may be made upon approval of the purchasing agent.

(b) Brand Name or Equal Specification.

(i) Brand name or equal specifications may be used when the purchasing agent determines that such a specification is in the purchasing agency's best interest.

(ii) Designation of Several Brands. Brand name or equal specification shall seek to designate as many different brands as are practicable as "or equal" references and shall state that products substantially equivalent to those designated will be considered for award.

(iii) Required Characteristics. Unless the purchasing agent authorized to finally approve specifications determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design and functional or performance characteristics which are required.

(iv) Nonrestrictive Use of Brand Name or Equal Specifications. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of designating the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

(c) Brand Name Specification.

(i) Use. Since use of a brand name specification is restrictive, such a specification may be used when the purchasing agent or designee makes a written determination. Such determination may be in any form deemed acceptable to the chief purchasing agent, such as a purchase evaluation, or a statement of single source justification. The written statement must state specific reasons for use of the brand name specification.

(ii) Competition. The purchasing agent shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 63-56-23 of the Utah Procurement Code.

(d) Qualified Products List.

(i) Use. A qualified products list may be developed with the approval of the purchasing agent, or the head of a purchasing or using agency authorized to develop qualified products lists, when testing or examination of the supplies or construction items prior to issuance of the solicitation is desirable or necessary in order to satisfy purchasing agency requirements.

(ii) Solicitation. When developing a qualified products list, a representative group of potential suppliers shall be solicited to submit products for testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer products for consideration in accordance with any schedule or procedure established for this purpose.

(iii) Testing and Confidential Data. Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with prior established requirements. Except as otherwise provided by law, trade secrets, test data, and similar information provided by the supplier will be kept confidential when requested in writing by the supplier. However, qualified products lists' test results shall be made public, but in a manner so as to protect the confidentiality of the identity of the competitors by, for example, using numerical designations.

Part 5

5-101 Exemption from Competitive Source Selection Method: Purchases made under the following conditions, and only with the authorization of the Utah County purchasing agent, may be exempt from complying with the competitive source selection methods provided for in Part 3. The purchasing agent may exempt such purchases from all or a portion of the rules or may require other actions to further the economic interest of Utah County. The purchasing agent shall make and retain a written record demonstrating how the following purchases fall within this Part 5:

- (1) Utah State Contracts: Procurement items available under Utah state contracts in accordance with the provisions or requirements of the Utah state contract, deviations from Utah state contractual terms allowed to meet Utah County project-specific requirements,
- (2) Other Governmental Entity Contracts: Procurement items available under another governmental entity, or association of governments, contracts which has gone through a competitive source selection process comparable to Utah County's, deviations from other entity's contractual terms allowed to meet Utah County project-specific requirements,
- (3) Expert Witnesses: Expert witnesses to provide testimony in litigation,
- (4) County's Interest: The purchasing agent may exempt purchases from all or a portion of these Rules and Regulations pertaining to source selection method when to do so is in the best interest of the County, such as when the purchasing agent determines that the potential cost of preparing, soliciting, and evaluating competitive sealed proposals or bids is expected to exceed the benefits normally associated with such solicitations,
- (5) Educational Materials: The purchase, directly from a publisher, of books, media advertisements, subscriptions, magazines, books, trade journals, reference works, periodicals, examinations materials, and similar articles of an educational, or instructional nature. This exemption does not apply to right-to-use software or right-to-use licenses that some providers may describe as a software subscription,
- (6) Elections: Goods, materials, supplies and services utilized by the county clerk for the purpose of performing his/her duties with regards to elections, and
- (7) Care of Inmates: Goods, materials, supplies and services utilized by the county sheriff for the purpose of providing individuals committed to jail with necessary food, clothing, bedding and medical care.

5-102 This section shall not be construed as authorizing the waiver of competitive bidding when such bidding is required by the provisions of any federal or state grant or relevant federal or state statute.

PART 6

MODIFICATION AND TERMINATION OF CONTRACTS

FOR SUPPLIES AND SERVICES

6-101 Revisions to Contract Clauses.

The clauses set forth in this regulation may be varied for use in a particular contract at the discretion of the purchasing agent.

6-102 Changes Clause.

Changes Clause in Fixed-Price Contracts. In fixed-price contracts, the following clause may be inserted:

"CHANGES"

Change Order. By a written order, at any time, and without notice to any surety, the purchasing agent may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:

(1) drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the purchasing agency in accordance therewith:

(2) method of shipment or packing; or

(3) place of delivery.

Adjustments of Price or Time or Performance. If any such change order increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the purchasing agency promptly and duly makes such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

Time Period for Claim. Within 30 days after receipt of a written change order under the Change Order paragraph of this clause, unless such period is extended by the purchasing agent in writing, the contractor shall file notice of intent to assert a claim for an adjustment.

Claim Barred After Final Payment. No claim by the contractor for an adjustment hereunder shall be allowed if asserted after final payment under this contract.

6-103 Stop Work Order Clause.

(1) Use of Clause. This clause is authorized for use in any fixed-price contract under which work stoppage may be required for reasons such as advancements in the state of the art, production modifications, engineering changes or realignment of programs.

(2) Use of Orders.

(a) Because stop work orders may result in increased costs by reason of standby costs, such orders will be issued only with prior approval of the purchasing agent.

(b) Stop Work orders shall include, as appropriate:

(i) a clear description of the work to be suspended;

(ii) instructions as to the issuance of further orders by the contractor for material or services.

(c) If an extension of the stop work order is necessary, it must be evidenced by a supplemental agreement as soon as feasible after a stop work order is issued. Any cancellation of a stop work order shall be subject to the same approvals as were required for the issuance of the order.

(3) Clause.

"STOP WORK ORDER"

Order to Stop Work. The purchasing agent, may, by written order to the contractor, at any time, and without notice to any surety, require the contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period after the order is delivered to the contractor. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or is legally extended, the purchasing agent shall either:

(a) cancel the stop work order;

(b) terminate the work covered by such order; or

(c) terminate the contract.

Cancellation or Expiration of the Order. If a stop work order issued under this clause is properly canceled, the contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly, if:

(a) the stop work order results in an increase in the time required for, or in the contractor's cost properly allocable to, the performance of any part of this contract; and

(b) the contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage.

Termination of Stopped Work. If the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise and such adjustment shall be in accordance with the Price Adjustment Clause of this contract.

6-104 Variations in Estimated Quantities Clause.

(1) Definite Quantity Contracts. The following clause may be used in definite quantity supply or service contracts:

"VARIATION IN QUANTITY"

Upon the agreement of the parties, the quantity of supplies or services, or both, specified in this contract may be increased provided:

(a) the unit prices for the increased quantity increment will remain the same and;

(b) such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

(2) Indefinite Quantity Contracts. No clause is provided here. However, the solicitation and contract should include:

(a) the minimum quantity, if any, the purchasing agency is obligated to order and the contractor to provide;

(b) whether there is an approximate quantity the purchasing agency expects to order and how this quantity relates to the minimum and maximum quantities that may be ordered under the contract;

(c) whether there is a maximum quantity the purchasing agency may order and the contractor must provide; and

(d) whether the purchasing agency is obligated to order its actual requirements under the contract, with exception for a stated quantity, which if exceeded, separate bids will be solicited.

6-105 Price Adjustment Clause.

The following clause may be used when price adjustments are anticipated:

"PRICE ADJUSTMENT"

Price Adjustment Methods. Any adjustment in contract price pursuant to the application of a clause in this contract shall be made in one or more of the following ways:

(1) by agreement on a fixed-price adjustment;

(2) by unit prices specified in the contract;

(3) in such other manner as the parties may mutually agree; or

(4) in the absence of agreement between the parties, by a unilateral determination by the purchasing agent of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee.

Submission of Cost or Pricing Data. The contractor shall provide cost or pricing data for any price adjustment Subject to the provisions or the cost or Pricing Data section of the Utah County Procurement Regulations.

6-106 Termination for Default Clause.

"TERMINATION FOR DEFAULT"

Default. If the contractor refuses or fails to timely perform any of the provisions of this contract, with such diligence as will ensure its completion within the time specified in this contract, the purchasing agent may notify the contractor in writing of the nonperformance, and if not promptly corrected, such officer may terminate the contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. The contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services elsewhere.

Contractor's Duties. Notwithstanding termination of the contract and subject to any directions from the purchasing agent, the contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the contractor in which the purchasing agency has an interest.

Compensation. Payment for completed supplies delivered and accepted by the purchasing agency shall be at the contract price. The purchasing agency may withhold amounts due the contractor as the purchasing agent deems to be necessary to protect the purchasing agency against loss because of outstanding liens or claims of former lien holders and to reimburse the purchasing agency for the excess costs incurred in procuring similar goods and services.

Excuse for Nonperformance or Delayed Performance. The contractor shall not be in default by reason or any failure in performance of this contract in accordance with its terms if such failure arises out of acts of God; acts of the public enemy; acts of the county and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.

Upon request of the contractor, the purchasing agent shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the purchasing agency.

Erroneous Termination for Default. If after notice of termination of the contractor's right to proceed under the provision of this clause, it is determined for any reason that the contractor was not in default under the provisions of this clause, or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience clause.

6-107 Liquidated Damages Clause.

"LIQUIDATED DAMAGES"

When the contractor is given notice of delay or nonperformance and fails to cure in the time specified, in addition to any other damages that are applicable, the contractor shall be liable for \$ per calendar day from date set for cure until either the purchasing agency reasonably obtains similar supplies or services if the contractor is terminated for default, or until the contractor provides the supplies or services if the contractor is not terminated for default. To the extent that the contractor's delay or nonperformance is excused under the Excuse for Nonperformance or Delayed Performance paragraph of the termination for Default Clause of this contract, liquidated damages shall not be due the purchasing agency.

6-108 Termination for Convenience Clause.

"TERMINATION FOR CONVENIENCE"

Termination. The purchasing agent may, when the interests of the purchasing agency so require, terminate this contract in whole or in part, for the convenience of the agency. The purchasing agent shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective. This in no way implies that the purchasing agency has breached the contract by exercise of the Termination for Convenience Clause.

Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The purchasing agent may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the purchasing agency. The contractor must still complete and deliver to the purchasing agency the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

Compensation.

(1) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data bearing on such claim. If the contractor fails to file a termination claim within 90 days from the effective date of termination, the purchasing agent may pay the contractor, if at all, an amount set in accordance with subparagraph (c) of this paragraph.

(2) The purchasing agent and the contractor may agree to a settlement provided the contractor has filed a termination claim supported by cost or pricing data and that the settlement does not exceed the total contract price plus settlement costs, reduced by payments previously made by the purchasing agency, the proceeds of any sales of supplies and manufacturing materials made under agreement, and the contract price of the work not terminated.

(3) Absent complete agreement under subparagraph (b) of this paragraph, the purchasing agent shall pay the contractor the following amounts, provided payments agreed to under subparagraph (b) shall not duplicate payments under this subparagraph:

(a) contract prices for supplies or services accepted under the contract;

(b) costs incurred in preparing to perform the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for accepted supplies or services; provided, however, that if it appears that the contractor would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(c) costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to the Contractor's Obligations paragraph of this clause. These costs must not include costs paid in accordance with subparagraph (c) (ii) of this paragraph.

(d) the reasonable settlement costs of the contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract. The total sum to be paid the contractor under this subparagraph shall not exceed the total contract price reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph (b) of this paragraph, and the contract price of work not terminated.

(4) Cost claimed or agreed to under this Section shall be in accordance with applicable Sections of the Utah County Procurement Regulations.

6-109 Novation, Assignment or Change of Name

(1) Assignment. No contract is transferable, or otherwise assignable, without the written consent of the purchasing agent provided, however, that a contractor may assign monies receivable under a contract after due notice to the purchasing agency.

(2) Recognition of a Successor in Interest; Novation. When in the best interest of the purchasing agency, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee shall agree that:

(a) the transferee assumes all of the transferor's obligations;

(b) the transferor waives all rights under the contract as against the agency; and

(c) unless the transferor guarantees performance of the contract by the transferee, the transferee shall, if required, furnish a satisfactory performance bond.

(3) Change of Name. When a contractor requests to change the name in which it holds a contract with a purchasing agency, the purchasing agent responsible for the contract shall, upon receipt of a document indicating such change of name (for example, an amendment to the articles of incorporation of the corporation), negotiate an agreement with the requesting contractor to effect such a change of name. The agreement changing the name should specifically indicate that no other terms and conditions of the contract are thereby changed.

PART 7

COST PRINCIPLES

7-101 Applicability of Cost Principles.

(1) Application. This Subpart contains cost principles and procedures to be used as guidance in:

(a) establishment of contract cost estimates and prices under contract made by competitive sealed proposals where the award may not be based on adequate price competition, contracts for certain services, or architect-engineer services;

(b) establishment of price adjustments for contract changes;

(c) pricing of termination for convenience settlements; and

(d) any other situation in which cost analysis is required.

(2) Limitation. Cost principles in this Subpart are not applicable to:

(a) the establishment of prices under contracts made by competitive sealed bidding or otherwise based on adequate price competition rather than the analysis of individual, specific cost elements, except that this subpart does apply to the establishment of adjustments of price for changes made to such contracts;

(b) prices which are fixed by law or regulation;

(c) prices which are based on established catalog prices or established market prices; and

(d) stipulated unit prices.

7-102 Allowable Costs.

(1) General. Any contract cost proposed for estimating purposes or invoiced for cost-reimbursement purposes shall be allowable as provided in the contract. The contract shall provide that the total allowable cost of a contract is the sum of the allowable direct costs actually incurred (or, in the case of forward pricing, the amount estimated to be incurred) in the performance of the contract in accordance with its terms, plus the properly allocable portion of the allowable indirect costs, less any applicable credits (such as discounts, rebates, refunds, and property disposal income).

(2) Accounting Consistency. All costs shall be accounted for in accordance with generally accepted accounting principles and in a manner that is consistent with the contractor's usual accounting practices in charging costs to other activities. In pricing a proposal, a contractor shall estimate costs consistently with cost accounting practices used in accumulating and reporting costs.

(3) When Allowable. The contract shall provide that costs shall be allowed to the extent they are:

(a) reasonable, as defined in Section 7-103 (Reasonable Costs);

(b) allocable, as defined in Section 7-104 (Allocable Costs);

(c) not made unlawful under any applicable law;

(d) not unallowable under Section 7-105 (Treatment of Specific Costs) or Section 7-106 (Costs Requiring Prior Approval to be Allowable); and

(e) actually incurred or accrued and accounted for in accordance with generally accepted accounting principles in the case of costs invoiced for reimbursement.

7-103 Reasonable Costs.

Any cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business. In determining the reasonableness of a given cost, consideration shall be given to:

(1) whether the cost is of a type generally recognized as ordinary and necessary for the conduct of the contractor's business or the performance of the contract;

(2) the restraints inherent in and the requirements imposed by such factors as generally accepted sound business practices, arm's length bargaining, federal and county laws and regulations, and contract terms and specifications;

(3) the action that a prudent businessman would take under the circumstances, considering responsibilities to the owners of the business, employees, customers, the purchasing agency, and the general public;

(4) significant deviations from the contractor's established practices which may unjustifiably increase the contract costs; and

(5) any other relevant circumstances.

7-104 Allocable Costs.

(1) General. A cost is allocable if it is assignable or chargeable to one or more cost objectives in accordance with relative benefits received and if it:

(a) is incurred specifically for the contract;

(b) benefits both the contract and other work, and can be distributed to both in reasonable proportion to the benefits received; or

(c) is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.

(2) Allocation Consistency. costs are allocable as direct or indirect costs. Similar costs (those incurred for the same purpose, in like circumstances) shall be treated consistently either as direct costs or indirect costs except as provided by these regulations. When a cost is treated as a direct cost in respect to on cost objective, it and all similar costs shall be treated as a direct cost for all cost objectives. Further, all costs similar to those included in any indirect cost pool shall be treated as indirect costs. All distributions to cost objectives from a cost pool shall be on the same basis.

(3) Direct Cost. A direct cost is any cost which can be identified specifically with a particular cost objective. A direct cost shall be allocated only to its specific cost objective. To be allowable, a direct cost must be incurred in accordance with the terms of the contract.

(4) Indirect Costs.

(a) An indirect cost is one identified with more than one cost objective. Indirect costs are those remaining to be allocated to the several cost objectives after direct costs have been determined and charged directly to the contract or other work as appropriate. Any direct costs of minor dollar amount may be treated as indirect costs, provided that such treatment produced substantially the same results as treating the cost as a direct cost.

(b) Indirect costs shall be accumulated into logical cost groups with consideration of the reasons for incurring the costs. Each group should be distributed to cost objectives benefiting from the costs in the group. Each indirect cost group shall be distributed to the cost objectives substantially in proportion to the benefits received by the cost objectives. The number and composition of the groups and the method of distribution should not unduly complicate indirect cost allocation where substantially the same results could be achieved through less precise methods.

(c) The contractor's method of distribution may require examination when:

(i) any substantial difference exists between the cost patterns of the work performed under the contract and the contractor's other work;

(ii) any significant change occurs in the nature of the business, the extent of subcontracting, fixed asset improvement programs, inventories, the volume of sales and production, manufacturing processes, the contractor's products, or other relevant circumstances; or

(iii) indirect cost groups developed for a contractor's primary location are applied to off-site locations. Separate cost groups for costs allocable to off-site locations may be necessary to distribute the contractor's costs on the basis of the benefits accruing to the appropriate cost objectives.

(d) The base period for indirect cost allocation is the one in which such costs are incurred and accumulated for distribution to work performed in that period. Normally, the base period is the contractor's fiscal year. A different base period may be appropriate under unusual circumstances. In such cases, an appropriate period should be agreed to in advance.

7-105 Treatment of Specific Costs.

(1) Advertising. The only allowable advertising costs are those for:

(a) the recruitment of personnel;

(b) the procurement of scarce items;

(c) the disposal of scrap or surplus materials;

(d) the listing of business' name and location in a classified directory; and

(e) other forms of advertising as approved by the purchasing agency when in the best interest of the agency.

(2) Bad Debts. Bad debts include losses arising from uncollectible accounts and other claims, such as dishonored checks, employee advances, and related collection and legal costs. All bad debt costs are unallowable.

(3) Contingencies.

(a) Contingency costs are contributions to a reserve account for unforeseen costs. Such contingency costs are unallowable except as provided in Subsection (3)(b) of this Section.

(b) For the purpose of establishing a contract cost estimate or price in advance of performance of the contract, recognition of uncertainties within a reasonably anticipated range of costs may be required and is not prohibited by this Subsection. However, where contract clauses are present which serve to remove risks from the contractor, there shall not be included in the contract price a contingency factor for such risks. Further, contributions to a reserve for self-insurance in lieu of, and not in excess of, commercially available liability insurance premiums, are allowable as an indirect charge.

(4) Depreciation and Use Allowances.

(a) Depreciation and use allowances are allowable to compensate contractors for the use of buildings, capital improvements, and equipment. Depreciation is a method of allocating the acquisition costs of an asset to period of its useful life. Useful life refers to the asset's period of economic usefulness in the particular contractor's operation as distinguished from its physical life. Use allowances provide compensation in lieu of depreciation or other equivalent costs. Consequently, these two methods may not be combined to compensate contractors for the use of any one type of property.

(b) The computation of depreciation or use allowances shall be based on acquisition costs. When the acquisition costs are unknown, reasonable estimates may be used.

(c) Depreciation shall be computed using any generally accepted method, provided that the method is consistently applied and results in equitable charges considering the use of the property. The straight-line method of depreciation is preferred unless the circumstances warrant some other method. However, the purchasing agency will accept any method which is accepted by the Internal Revenue Service.

(d) In order to compensate the contractor for use of depreciated, contractor-owned property which has been fully depreciated on the contractor's books and records and is being used in the performance of a contract, use allowances may be allowed as a cost of that contract. Use allowances are allowable, provided that they are computed in accordance with an established industry or government schedule or other method mutually agreed upon by the parties. If a schedule is not used, factors to consider in establishing the allowance are the original cost, remaining estimated useful life, the reasonable fair market value, and the affect of any increased maintenance or decreased efficiency.

(5) Entertainment.

(a) Entertainment costs include costs of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodging, transportation, and gratuities. Entertainment costs are unallowable.

(b) Nothing herein shall make unallowable a legitimate expense for employee morale, health, welfare, food service, or lodging cost; except that, where a net profit is generated by such employer related services, it shall be treated as a credit as provided in Section 7-207 (Applicable Credits). This section shall not make unallowable costs incurred for meetings or conferences, including, but not limited to, costs of food, rental facilities, and transportation where the primary purpose of incurring such cost is the dissemination of technical information or the stimulation of production.

(6) Fines and Penalties. Fines and penalties include all costs incurred as the result of violations of or failure to comply with federal, state, county, and local laws and regulations. Fines and penalties are unallowable costs unless incurred as a direct result of compliance with specific provisions of the contract or written instructions of the purchasing agent. To the extent that workman's compensation is considered by State law to constitute a fine or penalty, it shall not be an allowable cost under this Subsection.

(7) Gifts, Contributions, and Donations. A gift is property transferred to another person without the other person providing return consideration of equivalent value. Reasonable costs for employee morale, health, welfare, food services, or lodging are not gifts and are allowable. Contributions and donations are property transferred to a no profit institution which are not transferred in exchange for supplies or services of equivalent fair market value rendered by a nonprofit institution. Gifts, contributions, and donations are unallowable.

(8) Interest Costs.

(a) Interest is a cost of borrowing. Interest is not allowable except as provided in Subsection (8)(b) of this Section.

(b) Interest costs on contractor claims for payments due under purchasing agency contracts shall be allowable as provided in Section 63-56-64 of the Utah Procurement Code.

(9) Losses Incurred Under Other Contracts. A loss is the excess of costs over income earned under a particular contract. Losses may include both direct and indirect costs. A loss incurred under one contract may not be charged to any other contract.

(10) Material Costs.

(a) Material costs are the costs of all supplies, including raw materials, parts, and components (whether acquired by purchase from an outside source or acquired by transfer from any division, subsidiary, or affiliate under the common control of the contractor), which are acquired in order to perform the contract. Material costs are allowable, subject to Subsection 10(b) and Subsection 10(c) of this Section. In determining material costs, consideration shall be given to reasonable spoilage, reasonable inventory losses and reasonable overages.

(b) Material costs shall include adjustments for all available discounts, refunds, rebates and allowances which the contractor reasonably should take under the circumstances, and for credits for proceeds the contractor received or reasonably should receive from salvage and material returned to suppliers.

(c) Allowance for all materials transferred from any division (including the division performing the contract), subsidiary, or made on the basis of costs incurred by the transferor (determined in accordance with these cost principles regulations, except that double charging of indirect costs is unallowable), except the transfer may be made at the established price provided that the price of materials is not determined to be unreasonable by the purchasing agent and the price is not higher than the transferor's current sales price to its most favored customer for a like quantity under similar payment and delivery conditions and:

(i) the price is established either by the established catalog price, as defined in Section 63-56-5 of the Utah Procurement Code; or

(ii) by the lowest price offer obtained as a result of competitive sealed bidding or competitive sealed proposals conducted with other businesses that normally produce the item in similar quantities.

(11) Taxes.

(a) Except as limited in Subsection 11(b) of this Section, all taxes which the contractor is required to pay and which are paid and accrued in accordance with generally accepted accounting principles are allowable.

(b) The following costs are unallowable:

(i) federal income taxes and federal excess profit taxes;

(ii) all taxes from which the contractor could have obtained an exemption, but failed to do so, except where the administrative cost of obtaining the exemption would have exceeded the tax savings realized from the exemption;

(iii) any interest, fines, or penalties paid on delinquent taxes unless incurred at the written direction of the purchasing agent; and

(iv) income tax accruals designed to account for the tax effects of differences between taxable income and pretax income as reflected by the contractor's books of account and financial statements.

(c) Any refund of taxes which were allowed as a direct cost under the contract shall be credited to the contract. Any refund of taxes which were allowed as an indirect cost under a contract shall be credited to the indirect cost group applicable to any contracts being priced or costs being reimbursed during the period in which the refund is made.

(d) Direct government charges for services such as water, or capital improvements such as sidewalks, are not considered taxes and are allowable costs.

7-106 Costs Requiring Prior Approval to be Allowable.

(1) General. The costs described in Subsections (2), (3), (4), and (5) of this Section are allowable as direct costs to cost-reimbursement type contracts to the extent that they have been approved in advance by the purchasing agent. In other situations those costs are negotiable in accordance with general standards set out herein.

(2) Pre-Contract Costs. Pre-contract costs are those incurred prior to the effective date of the contract directly pursuant to, and in anticipation of, the award of the contract. Such costs are allowable to the extent that they would have been allowable if incurred after the date of the contract; provided that, in the case of a cost-reimbursement type contract, a special provision must be inserted in the contract setting forth the period of time and maximum amount of cost which will be covered as allowable pre-contract costs.

(3) Bid and Proposal Costs. Bid and proposal costs are the costs incurred in preparing, submitting, and supporting bids and proposals. Reasonable ordinary bid and proposal costs are allowable as indirect costs. Bid and proposal costs are allowable as direct costs only to the extent that they are specifically permitted by a provision of the contract or solicitation document. Where bid and proposal costs are allowable as direct costs, to avoid double accounting, the same bid and proposal costs shall not be charged as indirect costs.

(4) Insurance.

(a) Insurance costs are the costs of obtaining insurance in connection with performance of the contract or contributions to a reserve account for the purpose of self-insurance. Ordinary and necessary insurance costs are allowable in accordance with these cost principles. Self-insurance contributions are allowable only to the extent of the cost to the contractor to obtain similar insurance.

(b) Insurance costs may be approved as a direct cost only if the incurrence is specifically required for the performance of the contract.

(c) Actual losses which should reasonably have been covered by permissible insurance or were expressly covered by self insurance are unallowable unless the parties expressly agree otherwise in the terms of the contract.

(5) Litigation Costs. Litigation costs include all filing fees, legal fees, expert witness fees, and all other costs involved in litigating claims in court or before an administrative board. Litigation costs are allowable as indirect costs in accordance with these regulations, except that costs incurred in litigation against the purchasing agency are unallowable.

7-107 Applicable Credits.

(1) Definitions and Examples. Applicable credits are receipts or price reductions which offset or reduce expenditures allocable to contracts as direct or indirect costs. Examples include purchase discounts, rebates, allowance, recoveries or indemnification for losses, sale of scrap and surplus equipment and materials, adjustments for overpayments or erroneous charges, and income from employee recreational or incidental services and food sales.

(2) Reducing Costs. Credits shall be applied to reduce related direct or indirect costs.

(3) Refund. The purchasing agency shall be entitled to a cash refund if the related expenditures have been paid to the contractor under a cost-reimbursement type contract.

7-108 Advance Agreements.

(1) Purpose. Both the purchasing agency and the contractor should seek to avoid disputes and litigation arising from potential problems by providing in the terms of the contract the treatment to be accorded special or unusual costs.

(2) Procedure Required. Advance agreements may be negotiated either before or after contract award, but shall be negotiated before a significant portion of the cost covered by the agreement has been incurred. Advance agreement shall be in writing, executed by both contracting parties, and incorporated in the contract.

(3) Limitation on Costs Covered. An advance agreement shall not provide for any treatment of costs inconsistent with these regulations unless a determination has been made pursuant to Section 7-210 (Authority to Deviate from Cost Principles).

7-109 Use of Federal Cost Principles.

(1) Cost Negotiations. In dealing with contractors operating according to federal cost principles, such as Defense Acquisition Regulation, Section 15, or Federal Procurement Regulations, Part 1-15, the purchasing agent, after notifying the contractor, may use the federal cost principles as guidance in contract negotiations, subject to Subsection (2) of this Section.

(2) Incorporation of Federal Cost Principles; Conflicts Between Federal Principles and this Part.

(a) In contracts not awarded under a program which is funded by federal assistance funds, the purchasing agent may explicitly incorporate federal cost principles into a solicitation and thus into any contract awarded pursuant to that solicitation. The purchasing agent and the contractor by mutual agreement may incorporate

federal cost principles into a contract during negotiation or after award. In either instance, the language incorporating the federal cost principles shall clearly state that to the extent federal cost principles conflict with the regulations issued pursuant to Section 63-56-28(1) of the Utah Procurement Code, the county regulations shall control.

(b) In contracts awarded under a program which is financed in whole or in part by federal assistance funds, all requirements set forth in the assistance document including specified federal cost principles, must be satisfied. Therefore, to the extent that the cost principles specified in the grant document conflict with the cost principles issued pursuant to Section 63-56-28 (1) of the Utah Procurement Code, the cost principles specified in the grant shall control.

7-110 Authority to Deviate from Cost Principles.

If a purchasing agent desires to deviate from the cost principles set forth in these regulations, a written determination shall be made by such officer specifying the reason for the deviation.

PART 8

PROPERTY MANAGEMENT

SUBPART 8-1 -- PROPERTY MANAGEMENT RESPONSIBILITY

8-101 Quality Assurance, Inspection, and Testing.

The purchasing agent shall take such steps as deemed desirable to ascertain or verify that supplies, services, or construction items conform to specifications. In performing this duty, the purchasing agent, with the approval of the County Commission, may establish inspection and testing facilities, employ inspection personnel, enter into arrangements for the joint or cooperative use of laboratories, and contract with others for inspection or testing work as needed. The purchasing agent may delegate responsibility for inspection and testing to using agencies.

8-102 Warehousing and Storage.

Purchasing agencies are hereby delegated the authority to exercise supervision of any receiving, storage, and distribution facilities and services within their purview.

8-103 Inventory Management.

Purchasing agencies are hereby delegated the authority to exercise supervision of all inventories of tangible personal property belonging to them. All property located in warehouses and similar storage areas shall be inventoried annually, and accountability for such property shall reside with the respective agencies.

PART 8

PROPERTY MANAGEMENT

SUBPART 8-2 -- DISPOSITION PROCESS

8-201 Authority of Purchasing Agent.

No county agency shall transfer, sell, or trade in any personal property owned by the county without the written authorization of the purchasing agent.

8-202 Report of Surplus Property.

County agencies shall notify the purchasing agent, on such forms and at such times as the purchasing agent may prescribe, of all surplus property. In so doing, a county agency may suggest a dollar value per item or per lot that it desires to receive from any transfer or disposition of such surplus property, but the suggestion shall not constitute the minimum sale or transfer amount. Any such figures shall not be public information prior to transfer or sale.

8-203 Transfer of Surplus Property.

Insofar as feasible and practical, the purchasing agent will transfer surplus property to other county agencies. Transfer may also be made directly to other units of government, provided the property will be exclusively owned and used by one or more such units. The price of the property transferred shall be the fair market price based, where possible, on previous sales of similar products in the open market and shall be mutually agreed upon between the owning agency and the recipient, and approved by the purchasing agent. If agreement cannot be reached, the purchasing agent shall establish the price.

8-204 Sale of Surplus Property.

(1) General Requirements. Surplus property shall be offered to the general public through competitive sealed bids or public auction. It is recognized, however, that some types and classes of items can be sold more readily and advantageously by other means. In such cases, and also where the nature of the property or unusual circumstances call for its sale to be restricted or controlled, the purchasing agent may employ such other means, provided the purchasing agent makes a written determination that such procedure is advantageous to the agency.

(2) Competitive Sealed Bidding.

(a) Solicitation and Opening. When making sales by competitive sealed bidding, notice of the sale should be given at least ten days before the date set for opening bids. Notice shall be given by mailing a Request for Sale bids to prospective bidders, including those bidders on lists maintained for this purpose, and by making the Request for Sale bids publicly available. Newspaper advertisement may also be used. The Request for Sale bids shall list the property offered for sale; designate its location and how it may be inspected; and state the terms and conditions of sale and instructions to bidders including the place, date, and time set for bid opening. Bids shall be opened publicly.

(b) Award. Award shall be made in accordance with the provisions of the Request for Sale bids to the highest responsible and responsible bidder, provided that the price offered by such bidder is acceptable to the purchasing agent. Where such price is not acceptable, the purchasing agent may reject the bids in whole or in part and negotiate the sale provided the negotiated sale price is higher than the highest responsive and responsible bidder's price, or the purchasing agent may resolicit bids. When no bids are received on an item offered for sale, the purchasing agent may determine the method of disposal of the item, provided it is in the best interest of the agency.

(3) Auctions. Property may be sold at auction. When appropriate, an experienced auctioneer should be used to cry the sale and assist in preparation of the sale. The solicitation to bidders should stipulate, at a minimum, all the terms and conditions of any sale; that registration will be required in order to participate in the bidding; and that the purchaser must remove within a stated time all surplus property purchased.

(4) Trade In. Surplus property may be traded in only when the purchasing agent determines the trade in value is expected to exceed the value estimated to be obtained through the sale of such property.

PART 9

INSURANCE PROCUREMENT

9-101 Standard Bidding Method.

All new or renewal liability insurance purchases regardless of premium size (in accordance with Section 63-30-32, Utah Code Annotated, 1953) and all other new or renewal insurance purchases over \$5,000 annual premium will be made after advertisement for public bid, in accordance with these regulations, except in cases of emergency for nonliability policies. In awarding the bid, the purchasing agent shall consider the following.

(1) financial resources of agent, broker and underwriting company;

(2) quality of prior service rendered to the state;

(3) service facilities available in-state;

(4) service reputation;

(5) insurance experience and expertise;

(6) coverages and services to be provided; and

(7) any other reasonable factors which will provide the best possible coverage and service to the purchasing agency.

9-102 Alternate Bidding Method.

To avoid oversaturation of limited primary or reinsurance markets, a two-step bidding method may be used at the option of the purchasing agent.

(1) All interested agents and brokers would be required to qualify for final bidding according to reasonable selection criteria such as: similar accounts in office; size of firm; background of firm principles; specialized knowledge or expertise; and any other reasonable factors which will provide the best possible coverage for the purchasing agency. At least three unaffiliated brokers or agents must qualify for final bidding.

(2) The prequalified group of final bidders must submit a list of markets to the purchasing agent in order of preference. The purchasing agent will then, as equitably as possible, assign no more than five and no less than three markets to each final bidder, based upon their preferences.

Bidders will then submit an official bid for each assigned market, according to bid specifications.