

**R981-1. Purpose:** To carry out the intent of the Utah Procurement Code, Utah Code [Title 63, Chapter 56](#), as amended, for and on behalf of the State Board of Regents in its capacity as an institution of higher education (see [53B-1-102](#)).

## R981-2. References

- 2.1. Utah Code [§53B-7-101\(9\)](#)
- 2.2. Policy and Procedures [R141](#), Duties of the Commissioner of Higher Education

## R981-3. Definitions

- 3.1. **"Architect-engineer services"**: professional services within the scope of the practice of architecture as defined in the Utah Code.
- 3.2. **"Business"**: any corporation, partnership, individual sole proprietorship, joint stock company, joint venture or any other private legal entity.
- 3.2. **"Business entity"**: a sole proprietorship, partnership, association, joint venture, corporation, firm, trust, foundation, or other organization or entity used in carrying on commercial business activities for profit-making purposes.
- 3.3. **"Change order"**: a written order signed by the purchasing agent or designee, directing the contractor to suspend work or make changes, which the appropriate clauses of the contract authorize without the consent of the contractor of 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.
- 3.4. **"Compensation"**: anything of economic value, however designated, which is paid, loaned, granted, given, donated, or transferred to any person or business entity for or in consideration of personal services, materials, property, or any other thing whatsoever.
- 3.5. **"Construction"**: the process of building, renovating or demolishing any OCHE structure or building, major developmental work or landscaping of OCHE real property. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property.
- 3.6. **"Contract"**: any OCHE agreement for the procurement or disposal of supplies, services or construction.
- 3.7. **"Cost-reimbursement contract"**: a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this handbook, and a fee, if any.

---

<sup>1</sup> Adopted March 16, 1982, amended February 15, 1983 and October 27, 2005.

- 3.8. **"Emergency"**: a condition that threatens public health, welfare or safety, arising from natural forces (e.g., fire, wind, flood, storm, earthquake, epidemic or other natural disaster); from riot, unlawful assemble or mob violence; or from hostile acts of a public enemy.
- 3.9. **"Employer-Employee Relationship"**: a relationship that exists when OCHE has the right (whether or not it exercises the right) to supervise and control the manner of performance as well as the result of the service.
- 3.10. **"Established catalogue price"**: the price included in a catalogue, price list, schedule or other form that:
- 3.10.1. is regularly maintained by a manufacturer or contractor;
  - 3.10.2. is either published or otherwise available for inspection by customers; and
  - 3.10.3. 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.
- 3.11. **"Independent Consultant"**: an individual or organization under agreement to provide primarily professional services (including legal, accounting, actuarial, scientific, engineering, etc., or technical advice to OCHE) in an independent contractor relationship.
- 3.12. **"Independent Contractor"**: an individual or organization under agreement to provide services at a stated price or rate. An independent professional contractor differs from an independent consultant in that the consultant's service is, for the most part, that of providing professional or technical advice, whereas the contractor's service is to perform specific tasks.
- 3.13. **"Independent Contractor Relationship"**: a relationship that exists when OCHE has the right to control only the result of the service, not the manner of performance.
- 3.14. **"Invitation for bids"**: all documents, whether attached or incorporated by reference, utilized for soliciting bids.
- 3.15. **"Multiple primary vendor award"**: the award of purchase contracts to more than one vendor to furnish the same or similar supplies, services or construction so as to afford alternate sources to satisfy particular delivery, service or other unique procurement requirements.
- 3.16. **"OCHE employee"**: a person permanently employed by OCHE on a full or part-time basis, but does not include members of the Board or of any other advisory commission, board, or committee serving on a part-time basis.
- 3.17. **"Person"**: any business, individual, union, committee, club, other organization or group of individuals, not including a state agency, political subdivision, public authority or local public entity.
- 3.18. **"Procurement"**: buying, purchasing, renting, leasing 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.

- 3.19. **"Procurement Officer"**: For purpose of complying with the Utah Procurement Code and these regulations, the Commissioner of Higher Education, and any authorized representative of the Commissioner of Higher Education acting within the limits of authority, is the "procurement officer" for the Board of Regents.
- 3.20. **"Purchasing Agent"**: any person duly authorized to enter into and administer contracts and make written determinations with respect thereto. It also includes an authorized representative acting within the limits of authority.
- 3.21. **"Purchasing Group"**: OCHE employees working under the supervision of the Deputy Executive Director for Finance and Administration of UHEAA in the capacity of Administrative Services.
- 3.22. **"Purchase description"**: 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.
- 3.23. **"Request for proposals"**: all documents, whether attached or incorporated by reference, utilized for soliciting proposals.
- 3.24. **"Requisition"**: a form used to initiate the procurement of supplies, and services or construction utilizing approved OCHE purchase orders. Requisitions are not purchase orders and shall not be used or represented as such.
- 3.25. **"Reasonable bidder or offeror"**: 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.
- 3.26. **"Responsive bidder"**: a person who has submitted a bid which conforms in all material respects to the invitation for bids.
- 3.27. **"Rush Order"**: a requisition for supplies or services that require expedited handling on a special basis to meet urgent program needs.
- 2.28. **"Services"**: the furnishing of labor, time of 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.
- 3.29. **"Specification"**: 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.
- 3.30. **"Substantial interest"**: (1) the ownership, either legally or equitably, by an individual, his/her spouse, or his/her minor children, of at least ten percent of the outstanding capital stock of a corporation or a ten percent interest in any other business entity; or (2) the holding of a position in a business entity as an officer, director, or employee.
- 3.31. **"Supplies"**: all property, including but not limited to equipment, materials, printing and leases of real property, excluding land or a permanent interest in land.
- 3.32. **"Surplus supplies"**: 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.

3.33. **"Transaction"**: a formal or informal contract or agreement, express or implied, to which OCHE is a party, that involves any transfer of consideration or payment of compensation.

#### R981-4. Policy

4.1. **Use Established Purchasing and Fiscal Procedures**: For convenience and in the interests of economy, the procurement officer shall, to the maximum feasible extent procure supplies and services through the established purchasing and fiscal procedures, and subject to applicable procurement regulations and approved specifications prepared, issued, revised, and maintained by any of the state institutions of higher education, provided the use of such institutional procedures is approved by the institutional President.

4.2. **Construction and Architect-Engineering Services**: Procurement of construction and architect-engineering services shall be in accordance with legal requirements and implementing rules and regulations promulgated by the Utah State Building Board and State Division of Facilities Construction and Management, so far as they may be applicable.

4.3. **No Emoluments or Gratuities**: An employee who in any official capacity participates in the procurement of any supplies, services, construction, or insurance is guilty of a felony if the person asks, receives, or offers to receive any emolument, gratuity, contribution, loan, or reward or any promise thereof, either for the employee's own use or benefit of any other person or organization from any person interested in the sale of such supplies, services construction, or insurance.

4.4. **Purchasing Group Responsibilities**: The Purchasing Group is responsible for the procurement of all supplies and services required by OCHE.

4.4.1. The Purchasing Group shall establish operating procedures with which to locate and ensure adequate and continuing sources of supply, consistent with legal, budgetary and delivery requirements of user groups; to provide the necessary assistance to acquire such supplies and services on a timely and economical basis; to assure compliance with all applicable state and federal laws and State Board of Regents policies during the procurement process; and to provide assistance, consultation, and advice regarding all procurement needs of OCHE.

4.4.2. In discharging its responsibilities, the Purchasing Group may:

4.4.2.1. Initiate, conduct and conclude negotiations for the purchase of goods and services for OCHE.

4.4.2.2. Obligate OCHE for the purchase of goods and services.

4.4.2.3. Recommend changes in quality, quantity or kind of material requisitioned and/or to suggest appropriate alternatives.

4.4.3. The selection of suppliers in accordance with legal requirements is the responsibility of the Purchasing Group; however, suggestions by user groups will be considered whenever they are competitive with other sources or when delivery requirements or other unique requirements so demand.

4.4.4. Collaboration between the Purchasing Group and Computer Services is encouraged early in the purchasing process when computer or network related equipment and supplies are involved.

4.4.5. Information is available from the Purchasing Group for inspection relative to legal and contractual remedies available to OCHE, or vendors contracting business with OCHE, suspension of bidding privileges, vendor procedures, waiver of immunity, and claims procedures and other legal provisions binding upon OCHE.

4.4.6. The Administrative Officer to the Associate Executive Director for Finance and Administration of UHEAA shall maintain a complete and official records file of all OCHE contracts.

#### **4.5. Limitations and Restrictions on Procurement**

4.5.1. OCHE is prohibited from making purchases for the personal use of employees.

4.5.2. Purchase of supplies, services or construction from employees is authorized if special procedures are followed to avoid a violation of the Utah Public Officers' and Employees' Ethics Act, and when there is evidence that the purchase price is fair and reasonable.

4.5.3. Procurement from Vendor in which OCHE Employee has an Interest:

4.5.3.1. An OCHE employee is forbidden to participate in his/her official capacity with respect to any transaction between OCHE and a business entity in which the employee has a substantial interest.

4.5.3.2. An OCHE employee is forbidden to receive compensation (in addition to regularly budgeted salary or wages for services to OCHE) as a result of, or in connection with, any transaction between OCHE and a business entity in which the employee has a substantial interest.

4.5.3.3. It is the duty of every OCHE employee to disclose to his/her immediate superior, and to the OCHE Purchasing Group, the existence of a substantial interest which he/she has in any business entity which the employee knows, or has reason to believe, may submit a bid or sealed proposal for, or otherwise seek to enter into, a transaction with OCHE.

4.5.4. Orders or commitments for procurement by employees are not binding on OCHE. Individuals who do not comply with OCHE guidelines when placing procurement orders may become personally liable to the vendor for the contract price.

4.5.5. Honest efforts must be made by the employees and the Purchasing Group to obtain fair and adequate price quotes. Equal consideration must be given to all vendors regardless of race, gender, religion, or national origin.

4.5.6. An employee who in any official capacity participates in the procurement of any supplies, services, construction, or insurance is guilty of a felony if the person asks, receives, or offers to receive any emolument, gratuity, contribution, loan, or reward or any promise thereof, either for the employee's own use or benefit of any other person or organization from any person interested in the sale of such supplies, services construction, or insurance.

4.5.7. The Director for Accounting and Finance may not sign and approve purchase requisitions. UHEAA employees in this group needing an authorizing signature may request approval from the Associate Executive Director for Finance and Administration.

4.5.8. Advance payments may not be made except to specified government agencies, vendors with minimum prepayment requirements and in certain other cases as determined appropriate by the Purchasing Group.

#### 4.6. Use of Requisitions

4.6.1. Except as provided in paragraph 2 below, a requisition must be submitted to initiate the procurement of supplies, services or construction by the Purchasing Group.

4.6.2. Items or services not requiring a requisition include:

4.6.2.1. Payroll or attendance reports.

4.6.2.2. Purchases or payment under contract.

4.6.2.3. Payments for recurring monthly payments such as Telephone and Lease bills.

4.6.2.4. Issued organizational American Express Credit Cards.

4.6.3. Requisitions for nonstandard office furniture, equipment, and accessories require the authorizing signature of an Associate Commissioner.

4.6.4. Requisitions for computer, printing, and copying equipment must be reviewed by the Manager of Computer Services or his/her Designee.

#### 4.7. Use of Credit Cards

4.7.1. An Associate Commissioner has the responsibility for authorizing the issuance of all company credit cards issued to an OCHE employee for business use.

4.7.2. The Accounts Payable group is responsible for making payment of all OCHE obligations incurred through the authorized use of credit cards and matching the credit card charges with the receipts and authorizations.

4.7.3. The Assistant Commissioner/Associate Executive Director of each operating unit to which credit cards have been issued is responsible for controlling the use of such credit cards in accordance with OCHE policies and procedures.

4.7.3.1. Credit Cards are to be used for incidental, immediate need purchases of less than \$300.

4.7.3.2. Written pre-approval from an Associate Commissioner or Assistant Commissioner/ Associate Executive Director must be obtained for estimated purchases over \$300.

4.7.3.3. A receipt and purchase form must be signed by the cognizant Assistant Commissioner/ Associate Executive Director after the purchase is received.

4.7.4. The Cardholder must sign the charge receipt and retain the customer copy. The Cardholder should verify that either the charge receipt or sales receipt complies with the requirements for support documentation.

4.7.5. Each card user is responsible for ensuring that sales tax is not charged when making a purchase. The supplier should be notified of OCHE's tax exempt status at the point of purchase. If sales tax is charged in error, a request for a credit should be submitted to the supplier, by the cardholder, as soon as possible.

4.7.6. The Credit Card is the property of OCHE. If a card is lost or stolen, the Cognizant Assistant Commissioner/Associate Executive Director and the Card Company should be notified immediately. The Card should be cancelled and written confirmation of the cancellation received.

4.7.7. Cardholders must follow internet and computer usage guidelines when making purchases on the World Wide Web. Purchases should be made with companies that have been used via traditional methods in the past. The purchase should be encrypted in an acceptable manner.

4.7.8. The Cardholder is responsible for purchases made regardless of the method used. It is important to determine whether a Web site is the most appropriate method to use. Convenience should be weighed against price and risk.

4.7.9. Improper use of a card may result in cancellation of the card and disciplinary action, and could result in termination of employment and/or legal action by OCHE. A record of any violations of the Credit Card procedures will be maintained and reviewed.

4.8. **Equipment Screening:** Equipment purchases are not authorized if OCHE already possesses identical, substantially similar or functionally equivalent equipment that is reasonably available for use by the requisitioning unit.

#### 4.9. **Emergency Procurement**

4.9.1. Where there exists a threat to public health or safety as the result of emergency conditions, as determined in writing by an Associate Commissioner or his/her designee, the Purchasing Group is authorized to make emergency procurements. Such emergency Procurements shall be made with as much competition as practicable under the circumstances.

4.9.2. The written determination of the existence of the emergency, stating the basis thereof, together with a written statement of justification for the selection of the particular supplier/vendor shall be placed in the contract file.

#### 4.10. **Rush Orders**

4.10.1. **Planned procurement:** Work units should anticipate procurement requirements as far in advance as possible to provide sufficient lead time to apply established purchasing procedures and still meet delivery requirements.

4.10.2. **Special handling requests:** Upon request, the Purchasing Group will make every effort to obtain requisitioned supplies and services in the most expeditious manner possible, and will attempt to honor special handling and delivery instructions as appropriate.

4.10.3. **Expedited procedures:** Requisitions for supplies or services needed on an urgent, high priority basis may be delivered to the Purchasing Group with a written request that the requisition be processed on a rush order basis. Such requests will be processed immediately and with maximum feasible speed consistent with bidding and other legal requirements.

4.10.3.1. The cost of long distance telephone calls, FAX and sending required paperwork air overnight to secure rush orders will be charged to the requisitioning work unit.

4.10.3.2. Purchase orders to be placed with vendors outside the continental limits of the United States will ordinarily be sent by facsimile machine or U.S. mail.

4.10.3.3. When appropriate, a requisitioning work unit may be authorized by the Purchasing Group to deliver a duly authorized purchase order directly to a particular vendor and to take immediate possession of the purchased goods. In such cases, all memoranda, receipts, packing lists, invoices and other documents relating to the purchases and received from the vendor must be immediately transmitted to the Purchasing Group. The Purchasing Group will prepare the documents and deliver such documents to accounts payable for payment.

## R981-5. Informal Procurement Procedures

### 5.1. Form and Content of Requisitions

5.1.1. Small purchases of goods and services (i.e., purchases estimated to cost less than \$45,000) may be affected by the Purchasing Group on an informal basis using an OCHE requisition form.

5.1.2. Each requisition must include as a minimum the following information:

5.1.2.1. An accurate description and specification for every article listed, including catalog numbers, size, color, etc., but not so restrictive as to unduly limit competitive bidding.

5.1.2.2. Accounting cost center description.

5.1.2.3. Delivery instructions, stating specifically (1) when delivery is required, and (2) where delivery should be made, e.g., work unit, name of responsible individual.

5.1.2.4. Estimated cost of each item.

5.1.2.5. Possible sources of supply--list suggested sources and provide copies of any price information or correspondence referring to specialty items.

5.1.2.6. Appropriate Signatures are required on all requisitions.

a. Requisitions in amounts less than \$50 may be signed by the direct Manager of the requesting employee.

b. Requisitions in amounts of \$50-\$5,000 must be signed by the Assistant Commissioner/Associate Executive Director responsible for that respective cost center.

c. Requisitions in amounts greater than \$5,000 must be signed by the cognizant Associate Commissioner.



5.1.3. Separate requisitions should be prepared for each different cost center, however; when the cost of a single item is to be allocated to more than one cost center, only one requisition form should be used.

5.1.4. Each requisition should, so far as possible, be limited to similar or related items that are known, or can reasonably be expected, to be available from the same vendor.

5.1.5. All equipment, supplies or services that are intended to be acquired at or about the same time as component parts of a single transaction should be included in the same requisition or series of related requisitions submitted simultaneously. It is improper under the law to divide or split procurement transactions into small units that are artificially devised to avoid the bidding requirements and other procedures applicable to larger unit transactions.

5.1.6. Requests for advertising funds for recruitment of staff must be requisitioned with the standard OCHE requisition form. It should include the proposed advertisement verbiage and be signed by the cognizant Assistant Commissioner/Associate Executive Director.

## 5.2. Processing of Requisitions

5.2.1. Upon receipt of a properly prepared requisition, the Purchasing Group will initiate proceedings leading to purchase of the requisitioned item in accordance with statutory requirements, OCHE policy and this handbook.

5.2.2. The Purchasing Group will seek to correct by informal means errors and omissions on requisitions in consultation with the requisitioning unit and, so far as possible, consistent with legal requirements.

## 5.3. Solicitation of Bids

5.3.1. Price quotes should be obtained with the assistance of the Purchasing Group and must be attached to the requisition form. The requestor should indicate which quote has been selected. The least expensive quote should be selected. If it is not, a written explanation must be included.

5.3.1.1. Price quotes are not needed on purchases less than \$1,000.

5.3.1.2. Three documented verbal price quotes are required on purchases of \$1000-\$19,999.

5.3.1.3. Three written price quotes are required on purchases of \$20,000-\$45,000.

5.3.1.4. Purchases greater than \$45,000 must follow the Formal Procurement Procedures.

5.3.1.5. The Purchasing Group need not follow regular solicitation of bid procedures if a supplier has a current contract with the State of Utah, but only if the contract follows the guidelines set forth in the Utah Administrative Code R33-3 (<http://www.rules.utah.gov/publicat/code/r033-003.htm>).

5.3.2. Informal procurement of bids is subject to Formal Procurement Procedures Conflict of Interest specifications outlined in 6.2.5. of this policy.

#### **5.4. Creation of a Purchase Order**

5.4.1. After a requisition is received in good order by the Purchasing Group, the Purchasing Group will create an official OCHE Purchase Order containing the following:

5.4.1.1. OCHE assigned Purchase Order number.

5.4.1.2. Appropriate Purchasing Group Signature.

5.4.2. The original requisition and all supporting documentation including bids must be attached to the Purchase Order and scanned into the Procurement Imaging system.

#### **5.5. Processing of a Purchase Order**

5.5.1. Work units will receive an e-mail of each purchase order awarded bearing the order number assigned to the transaction. Requests for information related to any requisition should be viewed by purchase order on the Procurement Imaging System.

5.5.2. The Electronic copy of the purchase order should be checked promptly by the requisitioning work unit to assure that the order is correct. Any errors or discrepancies noted should be reported promptly to the Purchasing Group.

5.5.3. Any work unit correspondence relating to acquisition of goods or services must be processed through the Purchasing Group in order to avoid any unnecessary confusion or delay in the procurement process.

5.5.4. Questions regarding existing orders, vendors, product availability or other procurement problems should be directed to the Purchasing Group. Reports of delays and suggestions for improvement of the purchasing process should be directed to the Purchasing Group.

#### **5.6. Receiving**

5.6.1. The Purchasing Group is responsible for the receipt and distribution of all materials ordered for delivery.

5.6.2. The Purchasing Group will inspect all shipments for obvious damage, irregularities, or other discrepancies. The original requestor is ultimately responsible for the acceptance of the merchandise.

5.6.3. After receiving and inspecting purchased materials, the Purchasing Group will scan the packing slip and electronically attach it to the Requisition and Purchase Order. All original documents should be placed in a secure file.

5.6.4. The Purchasing Group will deliver the purchased materials to the original employee creating the requisition.

5.6.5. Notification of discovery of any damages, irregularities, nonconformity with specifications, or other discrepancies should be given immediately to the Purchasing Group in writing along with the materials and include the following information.

5.6.5.1. Vendor name and purchase order number.

5.6.5.2. Date received.

5.6.5.3. Item or items damaged or affected by discrepancies, irregularities, or nonconformity with specifications, together with a detailed description thereof.

5.6.5.4. Condition of parcel upon receipt.

5.6.5.5. Location of parcel.

5.6.6. It is the responsibility of the Purchasing Group to arrange the filing of all claims for damaged materials, as well as to initiate requests for replacement shipments. The return of any supplies or materials to the vendor, whether due to damage, misshipment, or other reasons, should be arranged through the Purchasing Group to assure that appropriate credit is received.

5.6.7. All damaged materials should be preserved in the condition in which received and must be kept in the original shipping containers. The materials should be returned to the vendor with a copy of the invoice after calling the vendor to make them aware of the issue and receive any specific return instructions. A written statement regarding the return should be attached to the invoice.

5.7. **Reporting:** The Purchasing Group is responsible for producing a monthly log of purchases, including orders placed, orders received, and orders outstanding.

## R981-6. Formal Procurement Procedures

### 6.1. Guidelines

6.1.1. Except as otherwise provided in this handbook, procurement of items or services in excess of \$45,000 will be awarded only after formal solicitation of sealed competitive bids or proposals.

6.1.2. Bids and proposals shall be invited from the widest practical selection of firms with proven performance from whom, in the judgment of the Purchasing Department, the procurement needs of OCHE can be satisfied.

6.1.3. All bids and proposals shall be reviewed by OCHE in-house advisor for internal policy compliance.

### 6.2. Specifications

6.2.1. The Purchasing Group is responsible for the preparation, issuance, revision, maintenance and monitoring of specifications for supplies, and services and construction required by OCHE. In the preparation of specifications, the Purchasing Group shall obtain the advice and assistance of the Associate Executive Director for Finance and Administration of UHEAA and cognizant Associate Commissioner.

6.2.2. All specifications shall seek to promote overall economy and best use for the purposes intended, shall encourage competition when applicable in satisfying OCHE needs and shall not be unduly restrictive.

6.2.3. Bids or proposals may designate a brand name "or equal" as a means to identify the performance or other specific requirements of a procurement. When so used, the salient features of the named brand that must be met by bidders/offers shall be clearly specified.

6.2.4. An individual who has participated in the preparation of a specification shall not be eligible to participate in or receive a contract award for any OCHE procurement using such specification. Exceptions to this rule may be granted by the cognizant Associate Commissioner if (a) an exception is justified by the existence of emergency conditions; (b) there is only one practicable source of supply for the contract requirements.

**6.2.5. Conflict of Interest**

6.2.5.1. The Purchasing Group shall process requisitions in accordance with established OCHE procurement procedures, and shall attempt to secure bids or proposals from, and to negotiate with, qualified vendors, including vendors in which the existence of a substantial interest on the part of an OCHE employee has been disclosed or otherwise called to the attention of the Purchasing Group.

6.2.5.2. All bids and proposals, and the proposed terms and conditions of all negotiated agreements, shall be subjected to technical and price evaluation in accordance with established OCHE procurement criteria and procedures; provided, however, that the Purchasing Group and all other personnel involved in the evaluation and award process must take appropriate steps to assure that there is no participation therein, direct or indirect, by any OCHE employee who is known to have a substantial interest in any business entity whose bid or proposal is under consideration.

6.2.5.3. If the Purchasing Group determines that in the best interest of OCHE, and in accordance with established criteria, the proposed procurement contract should be awarded or entered into with a business entity in which an OCHE employee is known to have a substantial interest, the Purchasing Group must request and receive from the OCHE employee a duly executed affidavit in substantially the following form:

I, (name) , hereby declare that, in my official capacity, I have not participated in, and that I have not and will not receive compensation (other than my regularly budgeted salary or wages from OCHE) as a result of, or in connection with, proposed contract (or purchase order) number \_\_\_\_\_.

(date) (signature)

6.2.5.4. **Remedies:** If any transaction is entered into in violation of the policies and procedures set forth herein:

a. The employee who violated the prohibitions specified, or who knowingly executed and submitted a false affidavit when requested, shall be subject to appropriate disciplinary action, including possible dismissal from OCHE employment, as provided in the Utah Public Officers' and Employees' Ethics Act.

b. OCHE shall have the right to rescind or nullify any contract or subcontract entered into in respect to such transaction without returning any part of the consideration that may have been received by OCHE pursuant thereto.

### **6.3. Competitive Bidding**

**6.3.1.** Competitive sealed bids shall be used for the procurement of products with defined specifications in excess of \$45,000.

**6.3.2.** The Purchasing Group is responsible for assuring that all bidding procedures, including the invitation to bid, giving of notice, establishment of criteria for bid evaluation, opening and evaluation of bids received, acceptance of bids and award of contracts are in compliance with the requirements of the Utah Procurement Code and OCHE regulations.

**6.3.3.** Public notice of invitations to bid shall be given a reasonable time, not less than ten (10) calendar days, and prior to the date for the opening of bids.

**6.3.4.** The amount of each bid, together with the name, business address, telephone number and identification number of any applicable contractor's license, of each bidder, shall be recorded at the time and place of bid opening. That record shall be open to public inspection.

**6.3.5.** Correction or withdrawal of inadvertently erroneous bids before or after award, and the cancellation of awards or contracts based on such bid mistakes, may be authorized by the cognizant Associate Commissioner, when requested in writing and accompanied by full documentation of the facts leading to presentation of the erroneous bid. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of OCHE or fair competition will be permitted. A decision to permit the correction or withdrawal of a bid, or to cancel an award or contract based on an alleged bid mistake shall be in writing, with a statement of reasons that takes into consideration the written evaluation and recommendation of the Purchasing Group.

**6.3.6.** When it is considered impractical to prepare initially a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of un-priced offers to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

### **6.4. Request for Proposals (RFP)**

**6.4.1.** Competitive sealed proposals shall be used for the procurement of services of consultants, professionals, and providers in excess of \$45,000. Proposals shall be solicited through an RFP through public notice and state the relative importance of price and other evaluating factors.

**6.4.2.** Discussions may be conducted with responsible offerors who submit proposals for the purpose of assuring full understanding of, and responsiveness to solicitation requirements.

**6.4.3.** Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and before the contract is awarded for the purpose of obtaining best and final offers.

**6.4.4.** In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competitive offerors.

**6.4.5.** Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to OCHE, taking into consideration price and the evaluation factors set

forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

#### **6.5. Exceptions: Procurement without Competition**

**6.5.1. Sole source contracts-** A contract may be awarded for a supply, service or construction item without competitive bidding when the Purchasing Group, with the approval of the cognizant Associate Commissioner, determines in writing that there is only one practicable source for the requisitioned item.

#### **6.6. Contractual Terms**

**6.6.1.** The Purchasing Group is responsible for assuring compliance with procedural requirements of the Utah Procurement Code applicable to the terms and provisions of procurement contracts, including requirements that specified determinations be made as a condition precedent to the inclusion or modification of specified contractual provisions.

**6.6.2.** When the best interests of OCHE so require, the Purchasing Group may include in OCHE procurement contracts any or all contract clauses, so far as relevant, that are authorized by the Utah Procurement Code with respect to adjustments in price, time of performance, scope of contract work, variations between estimated and actual quantities, site conditions, remedies and other contract provisions.

#### **6.7. Procurement of Construction Work**

**6.7.1.** Construction contracts will be entered into with responsible licensed contractors, subject to the provisions of the Utah Procurement Code. For the purpose of this provision, the term "construction" has the same meaning as in the Utah Procurement Code and includes remodeling, renovation and landscaping.

**6.7.2.** Bid security in an amount equal to at least five (5) percent of the amount of the bid shall be required for all competitive sealed bidding for construction contracts with an estimated cost of \$50,000 or more, and for any other contracts where such bid security is deemed essential by the Purchasing Group. Bid security shall be a bond provided by a surety company authorized to do business in this state, the equivalent in cash or any other form satisfactory to OCHE and consistent with the Utah Procurement Code.

**6.7.3.** When a bidder fails to comply with the requirement for bid security set forth in the invitation for bids, the bid shall be rejected unless the Purchasing Group determines in writing that the failure to comply with the security requirements is non-substantial.

#### **6.7.4. Performance and Payment Bonding**

**6.7.4.1.** When a construction contract is awarded for an amount exceeding \$50,000 and performance and payment bonding is stipulated in the bid solicitation, performance and payment bonds, or other forms of security satisfactory to OCHE must be delivered to OCHE, and shall be binding on the parties upon the execution of the contract, subject to the provisions of the Utah Procurement Code.

6.7.4.2. The form of the performance and payment bonds shall be substantially the same as for similar bonds required in connection with construction contracts awarded by the Utah State Building Board.

6.7.4.3. Performance and payment bonds may be required for construction contracts of \$50,000 or less in amount; provided that to promote the best interest of OCHE, the Purchasing Group, with the approval of the cognizant Associate Commissioner may waive the requirement of performance and payment bonds on contracts either below or over \$50,000 in amount.

## 6.8. Lease and Rental Agreements

6.8.1. No lease or rental of equipment or real property, including any interest in land, buildings, office space, or storage space may be entered into or will be binding upon OCHE unless the provisions of this procedure are satisfied.

6.8.2. Any request for leasing, or for the extension or renewal of a lease must be submitted and processed as follows:

6.8.2.1. A written request shall be submitted by the cognizant Associate Commissioner or his/her designee and include the following information:

- a. A description of the equipment or property proposed to be leased or of its general location and/or character.
- b. An explanation of the need for such space or equipment.
- c. A statement addressing the adequacies of power supplies, air handling equipment and general physical structure and floor plan. Estimated costs of any modifications or remodeling necessary to meet user needs should also be included, indicating proposed sources of funding for any such modifications or remodeling.
- d. A comparison of lease costs with purchase costs (including alternate methods of financing which have been investigated and the relative merits of such methods), and stating the estimated cost associated with leasing calculated on a simple interest basis.
- e. A letter from the Manager of Administration commenting upon and making recommendations relative to the proposed lease and the availability of space or equipment in existing facilities to meet the described need in a timely manner.
- f. A proposed lease agreement (a standard lease form used by landlord may be acceptable) which includes, among other things, the following:
  1. Term of lease.
  2. Monthly rental.
  3. Responsibility for utilities, maintenance, snow removal, custodial, grounds care, etc.
  4. Parking arrangements.

5. Responsibility for structural and roof maintenance and repairs.
6. Responsibility for insurance of structure, operation and general liability insurance.
7. Responsibility for property taxes, other taxes and assessments, ownership of any improvements made.

**6.8.2.2.** If the cognizant Associate Commissioner approves the proposed lease the following implementation steps shall be undertaken:

- a. The lease shall be negotiated and executed in accordance with applicable requirements of the Utah Procurement Code and OCHE regulations.
- b. The lease shall be signed by the cognizant Associate Commissioner or his/her designee on behalf of OCHE.

**6.8.3.** Requests for renewals and extensions of leases shall be submitted and reviewed in the same manner and under the same standards as original lease requests.

## **6.9. Independent Consultants and Independent Contractor Service Agreements**

### **6.9.1. Guidelines**

**6.9.1.1.** The use of consulting and professional service agreements is expected to be infrequent and primarily for the purpose of solving clearly delineated problems of short-term duration or to provide specific expertise not otherwise available.

- a. Selection of individuals to perform such services shall be made on the basis of qualifications, resources, experience, needs of OCHE and cost to OCHE.
- b. An employee of OCHE may be engaged as a consultant or to provide professional services as an independent contractor only if the contract services to be performed (a) are not within the normal performance expectations of OCHE arising from the employee's OCHE position, (b) are to be performed outside of the normal working time and work assignment of the employee and not under the direction, supervision, or control of OCHE and, (c) do not involve a conflict of interest prohibited by the Utah Public Officers' and Employees' Ethics Act.
- c. The specialized and unique qualifications required of independent consultants and independent professional service contractors are incapable of being evaluated on a comparative basis in relation to objective criteria or specifications. Accordingly, the selection of such individuals shall be done on an informal basis and without competitive bids or proposals.

**6.9.1.2.** An independent consultant or contractor may not be used to direct or carry out any major portion of a program. If it is desired to engage the services of an individual to direct or to participate extensively in a continuing program, that person must be employed through established OCHE employment procedures.

**6.9.1.3.** Independent consultants and independent contractors, as such, are not employees and shall not be entitled to employee benefits. They shall not be described or



recognized other than as "consultants or independent contractors" in any published report or other document relating to the services covered by the agreement.

6.9.1.4. An independent consultant or professional service contractor may not hire any employee of OCHE to perform any service covered by the consultant or contractor agreement.

## 6.9.2. Procedures

### 6.9.2.1. Written Agreement for Services

a. Any agreement for the services of an independent consultant shall be supported by a written contract, reviewed by in-house legal advisor and/or the Attorney General's Office.

b. The agreement is binding upon OCHE only if it is signed by an Associate Commissioner or appropriate designee.

6.9.2.2. There shall be no extension of the termination date, expansion of the scope of the original agreement, or increase in amounts payable without prior written approval by the cognizant Associate Commissioner or his/her designee.

6.9.2.3. A purchase order may not be used in lieu of an agreement required by this handbook as a means of securing and paying compensation for the services of an independent consultant or an independent professional service contractor.

6.9.2.4. An honorarium payment may not be used in lieu of an agreement required by this handbook as a means of paying compensation for services to OCHE.

## 6.9.3. Required Documentation

6.9.3.1. An invoice must be supplied by the contractor or consultant with each request for payment of services covered under this handbook and must specify the following:

- a. The date the work was performed.
- b. A specific description of the nature of the services rendered.
- c. The hourly or daily billing rate, and the total amount claimed to be due.
- d. Reimbursable expenses, if any, with supporting vouchers.

6.9.3.2. The invoice must be review and approved by the cognizant Associate Commissioner or his/her designee.