

May 6, 2015

MEMORANDUM

TO: State Board of Regents  
FROM: David L. Buhler  
SUBJECT: Revision to Policy R571, Delegation of Purchasing Authority

Issue

Regent Policy R571, *Delegation of Purchasing Authority*, has recently been reviewed by the Office of the Commissioner, the Utah Attorney General's Office, and USHE institutional personnel. The Legislative Administrative Rules Review Committee indicated in December that the Commissioner's office needed to file an administrative rule related to procurement. The few administrative rules that apply to USHE track Regents' policies closely. The attached proposed policy revision will be the foundation for the revised administrative rule filing the Commissioner's office makes with State Administrative Rules – in order to comply in a timely fashion an initial version of the rule was filed the end of last year with the anticipation that it would need to be revised.

Background

Over the last couple of months the Commissioner's staff have worked closely with UPAC (institutional purchasing officials) and Assistant Attorney General Kevin Olsen to put together the attached updates.

Significant revisions to the policy include:

- Section 3, definitions have been updated;
- Section 8, has been updated to be compliant with Utah State Code as well as adding additional detail about the condition of a donation, trial use, and emergency procurement.

Commissioner's Recommendation

The Commissioner recommends that the Regents approve revisions to policy R571, *Delegation of Purchasing Authority*, effective immediately.

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David L. Buhler  
Commissioner of Higher Education

DLB/GLS/KVO/CRW  
Attachments

## Preamble

Values and Guiding principles of Public Procurement

### Accountability

Taking ownership and being responsible to stakeholders for our actions...essential to preserve the public trust and protect the public interest.

*Principles:*

- Apply sound business judgment.
- Be knowledgeable of and abide by all applicable laws and regulations.
- Be responsible stewards of public funds.
- Maximize competition to the greatest extent practicable.
- Practice due diligence.
- Use procurement strategies to optimize value to stakeholders.

### Ethics

Acting in a manner true to these values...essential to preserve the public's trust.

*Principles:*

- Act and conduct business with honesty and integrity, avoiding even the appearance of impropriety.
- Maintain consistency in all processes and actions.
- Meet the ethical standards of the profession.

### Impartiality

Unbiased decision-making and action...essential to ensure fairness for the public good.

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- Treat suppliers equitably, without discrimination, and without imposing unnecessary constraints on the competitive market.
- Use sound professional judgment within established legal frameworks to balance competing interests among stakeholders.

### Professionalism

Upholding high standards of job performance and ethical behavior...essential to balance diverse public interests.

*Principles:*

- Be led by those with education, experience, and professional certification in public procurement.
- Continually contribute value to the organization.
- Develop, support, and promote the highest professional standards in order to serve the public good.

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<sup>1</sup> Approved September, 14, 2012.

## Service

Obligation to assist stakeholders...essential to support the public good.

### *Principles:*

- Be a crucial resource and strategic partner within the organization and community.
- Develop and maintain relationships with stakeholders.
- Maintain a customer-service focus while meeting the needs, and protecting the interests, of the organization and the public.

## Transparency

Easily accessible and understandable policies and processes...essential to demonstrate responsible use of public funds.

### *Principles:*

- Exercise discretion in the release of confidential information.
- Maintain current and complete policies, procedures, and records.
- Provide open access to competitive opportunities.

(Preamble excerpts taken from © National Institute of Governmental Purchasing, Inc)

**R571-1 Purpose:** ~~To provide institutions of Higher Education with the authority to individually adopt policies and rules conforming to the Utah Procurement Code. As required by Subsection 63G-6a-402(2), this policy and corresponding administrative rule R765-571 are related to the management and control of procurements and procurement procedures conducted by the institutions in the state system of higher education.~~

## R571-2 References

[2.1 Subsection 53B-1-102\(4\)](#)

[2.2 Subsection 53B-7-101\(10\)](#)

[2.3 Subsection 63G-6a-104\(1\)\(j\)](#)

[2.4 Subsection 63G-6a-104\(7\)](#)

[2.5 Subsection 63G-6a-104\(14\)](#)

[2.6 Subsection 63G-6a-106\(1\)\(a\)](#)

[2.7 Subsection 63G-6a-106\(4\)\(a\)](#)

~~2.3 Utah Code §53B—Higher Education~~

~~2.3.1 §53B-1-102(4)—State System of Higher Education. These institutions are empowered to sue and be sued and to contract and be contracted with under the general supervision of the board.~~

~~2.3.2 §53B-7-101(10)—State System of Higher Education. Each institution may do its own purchasing, issue its own payrolls, and handle its own financial affairs under the general supervision of the board.~~

~~2.4 Utah Code §63G-6A Utah Procurement Code~~

~~2.5 Utah Code §63G-6A-106 (a) Procurement Authority~~

### R571-3 Definitions

3.1 The terms used in this policy shall be defined as they are in Sections 63G-6a-103 and 104.

3.2 In addition, the following definition shall apply:

3.2.1 "Institution" means an institution of higher education listed in Section 53B-1-102, except the Utah College of Applied Technology.

~~3.3 **Applicable Rulemaking Authority:** as it relates to a state institution of higher education, the State Board of Regents.~~

~~3.4 **Head of a Public Procurement Unit:** as it relates to an institution of higher education of the state, the president of the institution of higher education, or the president's designee.~~

~~3.5 **Procurement Officer:** as it relates to a state purchasing unit, the head of the state purchasing unit, or a designee of the head of the state purchasing unit.~~

**R571-4 Delegation of Authority:** As outlined in ~~Utah Code Ann. §63G-6a-101, et. seq.~~ [Title 63G, Chapter 6a](#), effective May 1, 2013, the [Utah State](#) Board of Regents is the body designated with rulemaking authority over procurement for institutions of Higher Education. The Board delegates to each institution the authority to adopt and administer procurement policies, rules and processes that are in conformance with the Utah Procurement Code and this general policy [and corresponding administrative rule R765-571](#). Each president, or designee, is given authority over procurements at their respective institution.

**R571-5 Purpose Guiding Principles:** Each institution is charged to provide efficient and timely procurement services, that maximize the institution's resources and promotes its instruction, research, extension, and professional service programs. Each institution shall strive to obtain the maximum value for each dollar expended, utilizing open competition and impartial evaluation of alternate products. They should also foster fair, ethical, and legal trade practices, which develop a strong vendor community and promote public trust in the institution and the system of higher education.

**R571-6 Small Purchases:** Each institution shall establish policies, rules, and processes governing small purchases.

~~5.1~~ [6.1](#) Each institution shall establish the maximum expenditure that may qualify as a small purchase.

~~5.2~~ [6.2](#) Each institution may establish expenditure thresholds and procurement requirements related to those thresholds in relation to small purchases, including, but not limited to:

~~5.2.1~~ [6.2.1](#) Purchasing Cards (P-Card)

~~5.2.1.1~~ [6.2.1.1](#) The purpose of a purchasing card program is to establish a more efficient, cost-effective method of purchase and paying for low-dollar transactions. Institutions shall establish procedures that govern card issuance, card-holder training, and the auditing of purchasing card transactions.

~~5.2.2~~ [6.2.2](#) Requests for Quotation (RFQ)

~~5.2.2.1~~ 6.2.2.1 Institutions are charged to seek competition whenever practicable. RFOs involve soliciting quotes from two or more known vendors. Each institution should establish procedures regarding the acceptance of phone, fax, and email quotes.

~~5.2.3~~ 6.2.3 Small-dollar Purchase Orders

~~5.2.4~~ 6.2.4 Reimbursements

~~5.2.5~~ 6.2.5 Petty Cash

~~R571-6~~ R571-7 **Solicitations:** Each institution shall formally solicit competition for all procurements over the maximum small dollar expenditure established by the respective institution, unless the procurement falls under R571-8, Exceptions to the Solicitation Process, as required by law. Each institution shall establish policies, rules, and processes governing solicitations, including:

~~6.1~~ 7.1 **Invitation for Bid (IFB):** The Invitation for Bids is used to initiate a competitive sealed bid procurement.

~~6.1.1~~ 7.1.1 An IFB shall include a purchase description, and ~~all~~ contractual terms and conditions applicable to the procurement.

~~6.1.2~~ 7.1.2 A minimum of ~~ten seven~~ (10 7) days shall be provided for response.

~~6.1.3~~ 7.1.3 IFBs must be publically advertised as outlined in the Procurement Code.

~~6.1.4~~ 7.1.4 Bids shall be submitted using a sealed bid process.

~~6.1.5~~ 7.1.5 Bids shall be opened publically in accordance with the Procurement Code.

~~6.1.6~~ 7.1.6 Bids shall be evaluated based on the requirements set forth in the IFB, which may include objective criteria. Criteria not included in the IFB may not be used to evaluate bids.

~~6.1.7~~ 7.1.7 Contracts shall be awarded with reasonable promptness by notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the IFB.

~~6.1.8~~ 7.1.8 IFBs may be performed in multiple steps as outlined in the Procurement Code.

~~6.2~~ 7.2 **Request for Proposal (RFP):** An RFP process may be used instead of the IFB process if the procurement officer determines, in writing, that the RFP process will provide the best value to the institution.

~~6.2.1~~ 7.2.1 An RFP shall include a scope of work, ~~all~~ contractual terms and conditions applicable to the procurement, and the manner in which proposals are to be submitted.

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~~6.2.4~~ ~~Proposals shall not be opened publicly.~~

~~6.2.5~~ 7.2.4 Proposals shall be handled as outlined in the Procurement Code

~~6.2.6~~ 7.2.5 A committee of at least three (3) individuals shall be appointed to the evaluation committee

~~6.2.7~~ 7.2.6 The evaluation committee will rate proposals based on the criteria outlined in the RFP. Criteria not included in the RFP may not be used to evaluate proposals.

~~6.2.8~~ 7.2.7 The RFP process may be conducted in multiple steps, including presentations/discussions and requests for best and final proposals.

~~6.3~~ 7.3 **Request for Information (RFI):** The purpose of an RFI is to obtain information, comments, or suggestions from potential bidders or offerors before issuing an IFB or RFP. An RFI is not a procurement process.

**6.4 7.4 Request for Supplier Qualification (RFSQ):** An institution may prequalify potential bidders or offerors to provide any type of procurement item and limit participation in an IFB or RFP to the prequalified potential bidders or offerors.

~~6.4.1~~ 7.4.1 RFSQs shall include they type of procurement item to which it relates, the scope of work, the minimum criteria for prequalification, and period of time during which the list will be used.

~~R571-7~~ R571-8 **Exceptions to the Solicitation Process:** Each institution shall establish policies, rules, and processes governing exceptions to ~~the solicitation process, as required by law, which may include, including:~~ procurement requirements that comply with Part 8 of the Procurement Code and this policy and corresponding administrative rule. Institutions may award a contract for a procurement item without using a standard procurement process under the following circumstances:

~~7.1~~ 8.1 **Sole Source Procurement:** Sole Source Procurement is not permissible unless a requirement is available from only a single supplier. A requirement for a particular proprietary item does not justify a sole source prourment if there is more than one potential bidder or offeror for that item. The determination as to whether a procurement shall be made as a sole source shall be made in writing by the procurement officer, the head of the purchasing agency unit, or designee. In cases of reasonable doubt, competition should be solicited. ~~The following are examples of circumstances which could necessitate sole source procurement~~ Circumstances under which there is only one source for a procurement item may include, among other circumstances:

~~7.1.1~~ 8.1.1 where the most important consideration in obtaining a procurement is the compatibility of equipment, technology, software, accessories, ~~or~~ replacement parts, or is the paramount consideration service;

~~7.1.2~~ 8.1.2 where ~~a sole supplier's item is needed for trial use or testing~~ transitional costs are unreasonable or cost prohibitive; or

~~7.1.3~~ 8.1.3 ~~where a sole supplier's item is to be procured for resale~~ procurement of public utility services.;

~~7.1.4~~ where public utility services are to be procured.

8.2 Condition of a Donation: The institution may award a contract for a procurement item without competition if the procurement officer, head of the purchasing unit, or designee determine in writing that the award to a specific supplier, service provider, or contractor is a condition of a donation that will fund the full cost of the supply, service, or construction item.

8.3 Trial Use: The institution may award a contract for a procurement item without competition if the procurement officer, head of the purchasing unit, or designee determine in writing that the procurement item is needed for trial use or testing to determine whether the procurement item will benefit the procurement unit.

~~7.2~~ 8.4 **Emergency Procurement:** Emergency procurement is appropriate when an emergency condition exists that limits the capability of the institution to obtain competition. An emergency condition is a situation ~~which creates a threat to public health, welfare, or safety~~ where there is harm or risk of harm to public health, welfare, safety, or property. This includes harm or risk of harm to the institution's finances or operations. sSuch a condition as may arise as a result of (1) damage to a facility or infrastructure by reason of floods, fire, earthquake, storm or explosion; (2) epidemics; (3) riots; (4) equipment failures; (5) circumstances not in the institution's control where timeliness, litigation deadlines, or other factors necessitate waiver of provisions of the standard procurement process; or (5) such other reason as may be proclaimed determined by the Ppresident of the insitution or designee. These procurements shall be made in accordance with the Procurement Code with as much competition as

reasonably practical while avoiding harm, or a risk of harm, to the public health, safety, welfare, or property.

**R571-8 R571-9 Protests:** Aggrieved bidders, offerors, or potential bidders or offerors, may protest the solicitation's specifications or award decision in accordance with the Procurement Code. The aggrieved party may appeal a protest decision in accordance with the Procurement Code. Each institution shall establish policies, rules, and processes governing protests related to procurement in accordance with the Utah Procurement Code.

**R571-9 R571-10 Ethics:** Individuals employed by institutions of higher education must discharge their duties impartially so as to assure fair competitive access to procurement. Employees should conduct themselves in such a manner as to foster public confidence in the integrity of the system of higher education.

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8.1.3 procurement of public utility services.

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