

September 12, 2018

MEMORANDUM

TO: State Board of Regents

FROM: David L. Buhler

SUBJECT: USHE – Revision of Policy R571, Procurement

Issue

Recent changes to State's Procurement Code require additional revisions to Regent Policy R571, *Procurement* since it was last updated in the January 2017 meeting. The proposed changes will align the Regent policy with statute and continue to provide procurement governance for the System of Higher Education.

Background

The State Procurement Code allows each of the eight USHE institutions the ability to procure items with "independent procurement authority" without the supervision or control of the State Division of Purchasing. The Code provides for three levels of procurement governance:

1. statutory provisions in the Code
2. rules by "rulemaking authorities"
3. procedures and policies at each institution

The Procurement Code designates the Board of Regents as the "rulemaking authority" for the eight USHE institutions with regard to procurement and requires the Board to make specific rules which have been incorporated into Regent Policy R571, *Procurement* as well as a formal rule in the Utah Administrative Code (R765-571) filed with the State Division of Administrative Rules.

In the January 2017 meeting the Board made significant changes to Policy R751 to modernize the policy and align it with major statutory changes made by the state legislature to the State Procurement Code. Since that time the legislature has continued to modify the Procurement Code, which requires additional changes in Policy R751 and its associated administrative rule. Institutional procurement officers reviewed these changes and made a few additional requests to provide governance for their procurement practices. The changes recommended in this item include:

- Clarification that while USHE institutions may adopt some or all of the state procurement rule R.33 as part of their own procedures, the Board of Regents has not adopted that rule for the System
- Removal of the seven-day minimum standard for solicitations and requests for proposal

- Clarification of the definition of a Request for Information (RFI)
- Inclusion of the requirement to provide notice for certain procurements as required by law
- Enumeration of items, services, and circumstances for which sole source procurements are acceptable including as a condition of a grant or a donation
- Minor edits for clarification and grammar.

Commissioner's Recommendation

The Commissioner recommends the Regents approve the changes to Policy R571, effective immediately and authorize the Commissioner's Office to file an Administrative Rule adopting these changes into Administrative Code R765-571.

David L. Buhler
Commissioner of Higher Education

DLB/KLH/RPA
Attachments

R571-1 Purpose: As required by the Utah Procurement Code, this policy and corresponding Utah Administrative Code R765-571 govern 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 Utah Code §53B-1-102(4)

2.2 Utah Code §53B-7-101(112)

2.3 Utah Code §§63G-6a-101-2407 (Utah Procurement Code)

R571-3 Definitions

3.1 The terms used in this policy shall be defined as they are in 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 53B-1-102, except the Utah College of Applied Technology.

R571-4 Delegation of Authority: As established in 63G-6a-103(13)(f), the State Board of Regents is the body designated with rulemaking authority over procurement for institutions of Higher Education. The Board does not formally adopt any part of Utah Admin. Code R.33. However, each institution may adopt, in whole or in part, any rule listed in Utah Admin. Code R.33. Such adoption must be in writing. In the event of any conflict, inconsistency, or discrepancy between this policy and Utah Admin. Code R.33, this policy will govern. The Board delegates to each institution the authority to adopt and administer procurement policies and processes that conform with the Utah Procurement Code and this general policy and Utah Administrative Code R765-571. Each president, or designee, is given authority over procurements at their respective institution.

R571-5 Guiding Principles: Each institution is charged to provide efficient and timely procurement services, that maximize the institution's resources and promote 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, and processes governing small purchases.

6.1 Each institution shall establish the maximum expenditure that may qualify as a small purchase.

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:

¹ Approved September, 14, 2012, amended May 15, 2015, January 20, 2017, and September 21, 2018.

6.2.1 Purchasing Cards (P-Card): Purchasing card programs establish a more efficient method of paying for low-dollar transactions. Institutions shall establish procedures that govern card issuance, card-holder training, and auditing of purchasing card transactions.

6.2.2 Requests for Quotation (RFQ): Institutions shall seek competition whenever practicable. RFQs involve soliciting quotes from two or more known vendors. Each institution should establish procedures regarding the acceptance of phone, fax, and email quotes.

6.2.3 Small-dollar Purchase Orders

6.2.4 Reimbursements

6.2.5 Petty Cash

R571-7 Solicitations: When procuring items **over an established threshold for small purchases outlined in section 6.1**, each institution shall use a standard procurement process or an exception to the standard procurement process described in R571-8, comply with the Utah Procurement Code and comply with this policy. Each institution shall establish policies, and processes governing solicitations, including:

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

7.1.1 An IFB shall comply with the requirements of 63G-6a-603(2).

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

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

7.1.4 Bids shall be submitted using a sealed bid process.

~~**7.1.5**~~ Bids shall be opened ~~publically~~ in accordance with 63G-6a-604.

~~**7.1.6**~~ Institutions shall evaluate bids based on the requirements set forth in the IFB, including objective evaluation criteria. Criteria not included in the IFB may not be used to evaluate bids.

~~**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.

~~**7.1.8**~~ IFBs may be performed in multiple steps as established in the 63G-6a-609.

~~**7.1.9**~~ Unless otherwise established by policy, institutions shall resolve tie bids by having the president or designee toss a coin in the presence of a minimum of two witnesses with the firm first in alphabetical order being heads.

~~**7.1.10**~~ Institutions may handle bids as otherwise permitted by the Utah Procurement Code, including, but not limited to, rejecting bids, cancelling the IFB, and using a reverse auction process.

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.

7.2.1 An RFP shall comply with 63G-6a-703.

~~7.2.2 A minimum of seven (7) days shall be provided for response.~~

7.2.3~~2~~ RFPs must be publicall~~y~~ advertised as outlined in the Utah Procurement Code.

7.2.4~~3~~ Proposals shall be processed as outlined in the Procurement Code.

7.2.5~~4~~ The institution shall establish an evaluation committee of at least three (3) individuals.

7.2.6~~5~~ 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.

7.2.7~~6~~ The RFP process may be conducted in multiple steps, including presentations/discussions and requests for best and final proposals.

7.2.8~~7~~ Each institution shall establish policies and processes governing best and final offers in accordance with the Utah Procurement Code, this policy and Utah Admin.istrative Code R765-571.

7.2.9~~8~~ Institutions shall complete a justification statement as required by Utah Procurement Code.

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 ~~a supplemental~~ not a procurement process ~~described in Section 63G-6a-409.~~ and may not be used to (a) solicit cost, pricing, or rate information; (b) negotiate fees; (c) make a purchase; or (d) enter into a contract.

7.4 Request for Statement of Qualifications (RFSQ): An institution may use a RFSQ process to 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. An institution may also use a RFSQ process to create an approved vendor list. A RFSQ process is a supplemental procurement process described in ~~Section~~ 63G-6a-410.

7.4.1 A RFSQ in multiple-stage procurement process shall comply with 63G-6a-410(4).

7.4.2 A RFSQ in an approved vendor list process shall comply with 63G-6a-410(5).

7.5 Approved Vendor List Procurement Process: Each institution may establish policies and processes governing approved vendor lists and award contracts using methods that comply with the Utah Procurement Code, this policy and Utah Admin.istrative Code R765-561.

7.5.1 **Award:** Institutions choosing to use a vendor list may award a contract to a vendor on an approved vendor list at an established price based on a price list, rate schedule, or pricing catalog in accordance with ~~Section~~ 63G-6a-113.

7.5.2 **Selection of Vendors:** Institutions choosing to use a vendor list shall select vendors based on a rotation system, the assignment of ~~venders~~vendors to a specified geographic area, classifying vendors by particular expertise, qualifications or field, or some other method in accordance with a written, public, and fair process.

7.5.3 **Removal of Vendors from the Approved Vendor List:** Institutions choosing to use an approved ~~vender~~vendor list shall include a statement indicating that vendors whose performance

does not meet the minimum performance rating threshold may be disqualified and removed from the approved vendor list.

R571-8 Exceptions to Procurement Requirements: Each institution shall establish policies, rules, and processes governing exceptions to procurement requirements that comply with the Utah Procurement Code, this policy and ~~corresponding administrative rule~~ Utah Admin. Code R765-561. Institutions may award a contract for a procurement item without using a standard procurement process under the following circumstances and in compliance with 63G-6a-802:

8.1 Sole Source Procurement: A standard procurement process is not required where there is only one source for a procurement item. The institution's president or designee shall determine in writing whether a procurement shall be made as a sole source. ~~In cases of reasonable doubt, institutions should use competitive processes.~~ Notice of a sole source procurement must be published in accordance with 63G-6a-112 if the cost of the procurement item exceeds the amount established by the Utah Procurement Code except where excluded under section 8.6.

8.2 Transitional Cost: A standard procurement process is not required where transitional costs are a significant consideration in selecting a procurement item and the results of a cost benefit analysis demonstrate that transitional costs are unreasonable or cost-prohibitive and that the awarding of a contract without engaging in a standard procurement process is in the best interest of the institution. Notice of a procurement based on transitional cost must be published in accordance with 63G-6a-112 if the cost of the procurement item exceeds the amount established by the Utah Procurement Code except where excluded under section 8.6.

8.3 Circumstances in which the Standard Procurement Process is Impractical and Not in Institution's Best Interests: Institutions may establish policies and procedures that designate circumstances under which the standard procurement process is impractical and not in the best interest of the institution. Although the president or designee may add additional criteria, the following are ~~examples of~~ procurements that are deemed to make the awarding of a contract through a standard procurement process impractical or contrary to the institution's best interests:

8.3.1 public utility services.

8.3.2 a procurement item where the; most important consideration in obtaining the item is the compatibility of equipment, technology, software, accessories, replacement parts, or service;

~~8.3.3 an item which is a condition of a donation and subject to section 8.4;~~

8.3.3. unique research materials;

8.3.4 instructional materials or other needed items for curriculum purposes based on pedagogical need and academic freedom of instructors;

8.3.5 membership fees, conference registrations, seminars, subscriptions to intellectual content;

8.3.6 conference venues and associated meals and entertainment at said venues;

8.3.7 used equipment when determined to be more practical or advantageous to the institution;

8.3.8 placement advertising in magazines, journals, newspapers, radio, television, online, buses, billboards, etc.;

- 8.3.9 library journals, periodicals, and rare books;
- 8.3.10 athletic game guarantees;
- 8.3.11 guest lecturers, performers, entertainers, convocations;
- 8.3.12 broadcasting rights, television programming, and associated fees;
- 8.3.13 original works of art;
- 8.3.14 study abroad travel expenses; and
- 8.3.15 travel, including commercial airfare and hotels;
- 8.3.16 sub-recipients of sponsored projects contributing to the scope of work for the project;
- 8.3.17 supplies and/or services required by the National Collegiate Athletic Association (NCAA) or the institution's athletic conference;
- 8.3.18 institutional sponsorship of third parties;
- 8.3.19 a procurement item from a specific supplier, service provider, or contractor that is a condition of a grant that will fund the cost of the supply, service, or construction item;
- 8.3.20 a procurement item from a specific supplier, service provider, or contractor that is a condition of a donation(s) or sponsorship(s) that will fund the cost of the supply, service, or construction item. Neither state funds nor institutional funds may be added to the donation or sponsorship in order to make an award under the provisions of this section;
- 8.3.21 Publications of an article, manuscript, research paper, etc., in a professional journal, periodical, or other source;
- 8.3.22 Original equipment manufacturer (OEM) parts, supplies, maintenance, and service when determined to be in the best interest of the institution.

~~8.4 Condition of a Donation: The institution may award a contract for a procurement item without competition if the president or designee determine in writing that the award to a specific supplier, service provider, or contractor is a condition of a donation or sponsorship that will fund the cost of the supply, service, or construction item. These procurements do not require publication of notice. Neither state funds nor institutional funds may be added to the donation or sponsorship in order to make an award under the provisions of this section.~~

8.54 Trial Use: The institution may award a contract for a procurement item without competition if the requirements of **Section** 63G-6a-802.3 are met and the president 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 institution.

8.65 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 described in 63G-6a-803(1). These procurements shall be made with as much competition as reasonably practical while (1) avoiding a lapse in a critical government service; (2) avoiding harm, or a

risk of harm, to the public health, safety, welfare, or property; (3) protecting the legal interests of the institution.

8.76 Publication of Notice Not Required. Publication of notice under **Section** 63G-6a-802(3) is not required when the award is made under the circumstances described in 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 Utah Procurement Code. The aggrieved party may appeal a protest decision in accordance with the Utah Procurement Code. Each institution shall establish policies and processes governing protests related to procurement in accordance with the Utah Procurement Code.

R571-10 Ethics: The institution's employees shall discharge their duties impartially so as to assure fair competitive access to procurements. Employees' conduct should foster public confidence in the integrity of the system of higher education.

R571-11 Multi-Year Contracts: Multi-year contracts, including renewals, may exceed five years if the president or designee determines in writing that (1) a longer period is necessary in order to obtain the item, (2) a longer period is customary for industry standards, or (3) a longer period is in the best interest of the Institution. The written determination must be included in the procurement file.

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7.5.2 **Selection of Vendors:** Institutions choosing to use a vendor list shall select vendors based on a rotation system, the assignment of vendors to a specified geographic area, classifying vendors by particular expertise, qualifications or field, or some other method in accordance with a written, public, and fair process.

7.5.3 **Removal of Vendors from the Approved Vendor List:** Institutions choosing to use an approved vendor list shall include a statement indicating that vendors whose performance does not meet the minimum performance rating threshold may be disqualified and removed from the approved vendor list.

R571-8 Exceptions to Procurement Requirements: Each institution shall establish policies, rules, and processes governing exceptions to procurement requirements that comply with the Utah Procurement Code, this policy and Utah Admin. Code R765-561. Institutions may award a contract for a procurement item without using a standard procurement process under the following circumstances and in compliance with 63G-6a-802:

8.1 Sole Source Procurement: A standard procurement process is not required where there is only one source for a procurement item. The institution's president or designee shall determine in writing whether a procurement shall be made as a sole source. Notice of a sole source procurement must be published in accordance with 63G-6a-112 if the cost of the procurement item exceeds the amount established by the Utah Procurement Code except where excluded under section 8.6.

8.2 Transitional Cost: A standard procurement process is not required where transitional costs are a significant consideration in selecting a procurement item and the results of a cost benefit analysis demonstrate that transitional costs are unreasonable or cost-prohibitive and that the awarding of a contract without engaging in a standard procurement process is in the best interest of the institution. Notice of a procurement based on transitional cost must be published in accordance with 63G-6a-112 if the cost of the procurement item exceeds the amount established by the Utah Procurement Code except where excluded under section 8.6.

8.3 Circumstances in which the Standard Procurement Process is Impractical and Not in Institution's Best Interests: Institutions may establish policies and procedures that designate circumstances under which the standard procurement process is impractical and not in the best interest of the institution. Although the president or designee may add additional criteria, the following are procurements that are deemed to make the awarding of a contract through a standard procurement process impractical or contrary to the institution's best interests:

8.3.1 public utility services.

8.3.2 a procurement item where the; most important consideration in obtaining the item is the compatibility of equipment, technology, software, accessories, replacement parts, or service;

8.3.3. unique research materials;

8.3.4 instructional materials or other needed items for curriculum purposes based on pedagogical need and academic freedom of instructors;

8.3.5 membership fees, conference registrations, seminars, subscriptions to intellectual content;

8.3.6 conference venues and associated meals and entertainment at said venues;

8.3.7 used equipment when determined to be more practical or advantageous to the institution;

8.3.8 placement advertising in magazines, journals, newspapers, radio, television, online, buses, billboards, etc.;

8.3.9 library journals, periodicals, and rare books;

8.3.10 athletic game guarantees;

8.3.11 guest lecturers, performers, entertainers, convocations;

8.3.12 broadcasting rights, television programming, and associated fees;

8.3.13 original works of art;

8.3.14 study abroad travel expenses; and

8.3.15 travel, including commercial airfare and hotels;

8.3.16 sub-recipients of sponsored projects contributing to the scope of work for the project;

8.3.17 supplies and/or services required by the National Collegiate Athletic Association (NCAA) or the institution's athletic conference;

8.3.18 institutional sponsorship of third parties;

8.3.19 a procurement item from a specific supplier, service provider, or contractor that is a condition of a grant that will fund the cost of the supply, service, or construction item;

8.3.20 a procurement item from a specific supplier, service provider, or contractor that is a condition of a donation(s) or sponsorship(s) that will fund the cost of the supply, service, or construction item. Neither state funds nor institutional funds may be added to the donation or sponsorship in order to make an award under the provisions of this section;

8.3.21 Publications of an article, manuscript, research paper, etc., in a professional journal, periodical, or other source; and

8.3.22 Original equipment manufacturer (OEM) parts, supplies, maintenance, and service when determined to be in the best interest of the institution.

8.4 Trial Use: The institution may award a contract for a procurement item without competition if the requirements of 63G-6a-802.3 are met and the president 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 institution.

8.5 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 described in 63G-6a-803(1). These procurements shall be made with as much competition as reasonably practical while (1) avoiding a lapse in a critical government service; (2) avoiding harm, or a risk of harm, to the public health, safety, welfare, or property; (3) protecting the legal interests of the institution.

8.6 Publication of Notice Not Required. Publication of notice under 63G-6a-802(3) is not required when the award is made under the circumstances described in 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 Utah Procurement Code. The aggrieved party may appeal a protest decision in accordance with the Utah Procurement Code. Each institution shall establish policies and processes governing protests related to procurement in accordance with the Utah Procurement Code.

R571-10 Ethics: The institution's employees shall discharge their duties impartially so as to assure fair competitive access to procurements. Employees' conduct should foster public confidence in the integrity of the system of higher education.

R571-11 Multi-Year Contracts: Multi-year contracts, including renewals, may exceed five years if the president or designee determines in writing that (1) a longer period is necessary in order to obtain the item, (2) a longer period is customary for industry standards, or (3) a longer period is in the best interest of the Institution. The written determination must be included in the procurement file.