

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; and
- (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.