

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF WEBER COUNTY AMENDING CERTAIN  
PROVISIONS OF THE PURCHASING CODE**

**WHEREAS**, in accordance with Utah Code Annotated § 63G-6a-107.4, Weber County (“County”) may adopt any or all provisions of the Utah Procurement Code;

**WHEREAS**, the County has elected to pass its own Procurement Ordinance that is patterned off some provisions of the Utah Procurement Code yet tailored to the specific needs of the County;

**WHEREAS**, it has become necessary to update and revise the County’s Purchasing Ordinance numbered under Title 2, Chapter 9 of the County Code.

**NOW THEREFORE**, the Board of County Commissioners of Weber County amends the Purchasing Ordinance as follows:

Title 2, Chapter 9 is hereby repealed in its entirety. Title 3 is enacted as follows:

## TITLE 3 – PURCHASING

### CHAPTER 1. – General Procurement Provisions

**Sec. 3-1-1. – Title.**

(1) This title is known as “Purchasing.”

**Sec. 3-1-2. – Purpose.**

(1) The purposes of this title are:

- a. to enable the county to acquire those goods and services that are necessary for it to provide public services;
- b. to ensure the fair and equitable treatment of all persons who participate in the procurement process;
- c. to provide increased economy in county procurement activities; and
- d. to foster effective broad-based competition within the free enterprise system.

(2) The provisions of this title should be liberally construed to accomplish those objectives.

**Sec. 3-1-3. – Application of title.**

(1) This title applies to every procurement made by the county unless otherwise stated.

- (2) This title does not apply to:
  - a. the acquisition or rental of real property or an interest in real property;
  - b. the procurement of public utility services;
  - c. contracts between the county and other government entities.
  - d. supplies purchased for resale to the public;
  - e. activities related to the management of banking services and investments;
  - f. the hiring of a mediator, arbitrator, or arbitration panel member to participate in dispute resolution efforts;
  - g. the disposal of real or personal property;
  - h. the hiring of consultants or expert witnesses to aid in the prosecution or defense of criminal or civil legal matters.
- (3) Notwithstanding any conflicting provision of this title, a procurement may be administered in accordance with the requirements imposed by a grant or other source of the funds used to procure the goods and services.
- (4) Notwithstanding any conflicting provision of this title, if a procurement involves the expenditure of federal or state assistance, federal contract funds, local matching funds, or federal financial participation funds, the county shall comply with mandatory applicable federal or state law and regulations not reflected in this title.
- (5) No department, office, advisory board, policy board, or other organization of county government, nor any officer or employee thereof, shall be authorized to execute any purchase order or contract except as specifically authorized in this title. All purchase orders and contracts executed in violation of this provision shall be void as to the county, and persons at fault may be held personally liable for such violations.

**Sec. 3-1-4. – Definitions.**

As used in this title:

- (1) “Acquiring Entity” means a department of the county or other entity authorized to engage in a procurement using public funds on behalf of the county.
- (2) “Bid” means an offer by a bidder in response to an invitation for bids.
- (3) “Bidder” means a person who submits a response to a solicitation.
- (4) “County” means the County of Weber, Utah.
- (5) “Days” means calendar days, unless expressly provided otherwise.

- (6) “Goods and services” means any work, labor, commodities, equipment, materials, or supplies of any tangible or intangible nature other than labor, effort, or work provided under an employment agreement or a collective bargaining agreement.
- (7) “Grant” means an award of funds or other assistance under a set of prescribed criteria to accomplish a public purpose.
- (8) “Immaterial error”
  - a. means an irregularity or abnormality that is:
    - i. a matter of form that does not affect substance; or
    - ii. an inconsequential variation from a requirement of a solicitation that has no, little, or a trivial effect on the procurement process and that is not prejudicial to other bidders; and
  - b. includes:
    - i. a missing signature, missing acknowledgment of an addendum, or missing copy of a professional license, bond, or insurance certificate;
    - ii. a typographical error;
    - iii. an error resulting from an inaccuracy or omission in the solicitation; and
    - iv. any other error that the procurement official reasonably considers to be immaterial.
- (9) “Invitation for bids” means the procurement process established under Chapter 2 of this title.
- (10) “Procure” means to acquire goods and services through a procurement.
- (11) “Procurement” means the acquisition of goods and services through an expenditure of public funds, or an agreement to expend public funds, including an acquisition through a public-private partnership.
- (12) “Proposal” means an offer by a bidder in response to a request for proposals.
- (13) “Public funds” means money, regardless of its source, including from the federal government, that is owned or held by the county.
- (14) “Purchase Order” means a document issued by the purchasing agent to procure limited goods or services by outright purchase.
- (15) “Purchasing agent” means the procurement officer for the county.
- (16) “Quote” means an offer by a bidder in response to a solicitation of quotes.

- (17) “Real property” means land and any building, fixture, improvement, appurtenance, structure, or other development that is permanently affixed to land.
- (18) “Request for proposals” means the procurement process established under Chapter 3 of this title.
- (19) “Responsible” means being capable, in all respects, of:
- a. satisfactorily fulfilling all the requirements of the solicitation; and
  - b. fully performing all the requirements of the contract resulting from the solicitation.
  - c. In determining responsibility, the purchasing agent may take into consideration:
    - i. the bidder’s financial responsibility;
    - ii. past transactions with the bidder;
    - iii. the experience of the bidder or the bidder’s employees, agents, or subcontractors;
    - iv. the adequacy of the bidder’s equipment;
    - v. the bidder’s ability to complete performance within a specified time limit; and
    - vi. other pertinent considerations.

Subject to Title 63G, Chapter 2, Government Records Access and Management Act, information regarding the responsibility of a bidder may not be disclosed without the bidder's prior written consent.

- (20) “Responsive” means conforming in all material respects to the requirements of a solicitation. Responses that are not responsive include those that:
- a. are conditional;
  - b. attempt to modify the solicitation requirements;
  - c. contain additional terms or conditions; or
  - d. otherwise fail to conform with the requirements or specifications of the solicitation.
- (21) “Solicitation” means a solicitation of quotes, an invitation for bids, a request for proposals, or a request for statement of qualifications.
- (22) “Solicitation of quotes” means the procurement process established under Section 3-1-7(4).

- (23) “State Contract” means a contract that has been approved by the State of Utah through a standard procurement process, and the contract is available for use by other government entities.
- (24) “Subcontractor”
- a. means a person under contract to perform part of a contractual obligation under the control of the contractor, whether the person's contract is with the contractor directly or with another person who is under contract to perform part of a contractual obligation under the control of the contractor; and
  - b. includes a supplier, distributor, or other vendor that furnishes supplies or services to a contractor

**Sec. 3-1-5. – Purchasing agent.**

- (1) The purchasing agent serves as the procurement officer of the county under the direction and supervision of the Weber County Clerk/Auditor.
- (2) The purchasing agent shall:
- a. develop procurement policies and procedures supporting ethical procurement practices, fair and open competition among bidders, and transparency within the procurement process;
  - b. ensure the county’s compliance with any applicable law, rule, or policy applicable to procurement;
  - c. manage the county’s electronic procurement system;
  - d. manage and supervise each procurement to ensure to the extent practicable that taxpayers receive the best value;
  - e. correct, amend, or cancel a procurement at any stage of the procurement process if the procurement is out of compliance with this title;
  - f. keep an accurate and complete record of all procurements and a detailed disposition of the same;
  - g. oversee the training of county employees regarding the procurement process;
  - h. provide exemplary customer service;
  - i. seek to continually improve the county’s procurement operations;

- j. ensure that all aspects of each procurement are fully resolved including price, delivery date, delivery terms, acceptance period, warranties, and other terms and conditions as appropriate;
- k. coordinate the disposition of surplus personal property in accordance with Title 2, Chapter 21 of this County Code; and
- l. exercise all other authority, fulfill all other duties and responsibilities, and perform all other functions authorized under this title.

(3) The purchasing agent may:

- a. delegate limited purchasing authority to county employees, with appropriate oversight and control to ensure compliance with this title and with state law;
- b. delegate duties and authority to an employee of the purchasing department, as the purchasing agent considers appropriate in compliance with state law;
- c. negotiate and settle contract overcharges, undercharges, and claims, with final approval by the board of county commissioners;
- d. waive any minor informality or minor technicality in a response which does not materially change the significant elements of the response and accept those responses deemed to be in the best interest of the county.
- e. cancel any solicitation when deemed in the best interest of the county;
- f. remove an individual from the procurement process for:
  - i. having a conflict of interest or the appearance of a conflict of interest with a bidder;
  - ii. having a bias or the appearance of bias for or against a bidder;
  - iii. making an inconsistent or unexplainable score for a response;
  - iv. having inappropriate contact or communication with a bidder;
  - v. socializing inappropriately with a bidder;
  - vi. engaging in any other action or having any other association that causes the purchasing agent to conclude that the individual cannot fairly evaluate a response; or
  - vii. any other violation of a law, rule, or policy.

**Sec. 3-1-6. – Procurement process required.**

- (1) Except as otherwise provided, goods and services may not be procured by the county unless the county complies with the requirements of this title and uses:
  - a. a procurement process as defined under Section 3-1-7; or
  - b. an exception to the procurement process, as defined under Sections 3-4-5 and 3-4-6.
- (2) All purchase orders and contracts shall be made on a competitive basis to the maximum extent practicable.

**Sec. 3-1-7. – Type of procurement process is based on total cost.**

- (1) Unless otherwise specified in this title, the cost of the goods and services determines the type of procurement process that should be followed.
- (2) The acquiring entity shall determine the total cost of a procurement by adding together all amounts to be paid over the entire term of the contract, including shipping charges, maintenance which is part of the contract, and any other costs or expenses anticipated to be borne by the county in connection with the procurement.
- (3) Procurements that are \$10,000 or less are considered small purchases and may be made without engaging in a solicitation.
- (4) For procurements between \$10,001 and \$20,000:
  - a. The acquiring entity shall engage in the procurement through a solicitation of quotes by email, telephone, or otherwise to at least three bidders, or if the acquiring entity is unable to identify at least three bidders, to as many bidders as can be reasonably identified.
  - b. The purchasing agent shall evaluate each bid in the best interest of the county and may use the same evaluation criteria described in Section 3-2-7.
  - c. Notwithstanding Subsection (4)(a) and (4)(b), the purchasing agent may, in the best interest of the county, require the procurement to be made following an invitation for bids or request for proposals.
- (5) For procurements between \$20,001 and \$100,000:
  - a. The acquiring entity shall make the purchase following a solicitation of quotes, invitation for bids, or request for proposals.
  - b. The purchasing agent shall determine, in the best interest of the county, which type of procurement under Subsection (5)(a) shall be used.
- (6) For procurements of \$100,001 or more:

- a. The acquiring entity shall make the procurements following an invitation for bids or a request for proposals.
  - b. The purchasing agent shall determine, in the best interest of the county, which type of procurement under Subsection (6)(a) shall be used.
- (7) For all procurements exceeding \$10,000, a contract or purchase order shall be prepared formalizing such acquisition. The purchasing agent shall exclusively determine, in the best interest of the county, whether a purchase order or contract shall be used.
- (8) For all procurements requiring a solicitation, the purchase shall be awarded to the lowest responsive and responsible bidder.

**Sec. 3-1-8. – Security and performance bonds.**

- (1) The purchasing agent may require response security bonds, performance bonds, or other security as the purchasing agent deems advisable to protect the interests of the county.
- (2) The requirements for security must be set forth in the solicitation.

**CHAPTER 2. – Invitation for Bids**

**Sec. 3-2-1. – Policy of use.**

- (1) An invitation for bids should be used when cost is the major factor in determining the award of a procurement.

**Sec. 3-2-2. – Publication and contents of the invitation for bids.**

- (1) The invitation for bids process begins when the purchasing agent publishes an invitation for bids. The purchasing agent shall publish an invitation for bids to the maximum extent practicable to promote fair competition. The purchasing agent shall ensure that it is published for at least seven days before the day of the deadline for submission of a bid.
- (2) An invitation for bids shall:
  - a. be prepared by the acquiring entity;
  - b. to the extent practicable, provide a full description of the goods and services sought and a full scope of work;
  - c. provide information on how to contact the purchasing agent regarding the solicitation;
  - d. state the objective criteria that will be used to evaluate the bid;
  - e. state the period of time during which bids will be accepted;
  - f. provide instructions for submitting a bid.



**Sec. 3-2-3. – Bid opening and acceptance.**

- (1) The purchasing agent shall open the bids after the expiration of the time for submission of bids as indicated in the invitation for bids.
- (2) Bids shall be accepted without alteration or correction, except as otherwise authorized by this title.
- (3) The purchasing agent may not accept a bid after the time for submission of a bid has expired.

**Sec. 3-2-4. – Clarifying information in a bid.**

- (1) The purchasing agent may make a written request to a bidder to clarify information contained in a bid at any time.

**Sec. 3-2-5. – Rejecting a bid.**

- (1) The purchasing agent may reject a bid for the following reasons:
  - a. a violation of this title by the bidder who submitted the bid;
  - b. a violation of a requirement of the invitation for bids;
  - c. unlawful or unethical conduct by the bidder who submitted the bid;
  - d. the bid is not responsive or the bid is submitted by a bidder who is not responsible;
  - e. a change in a bidder's circumstance that, had the change been known at the time the bid was submitted, would have caused the bid to be rejected; or
  - f. the bidder has had a previous contract with the county that was cancelled.
- (2) If the purchasing agent rejects a bid, the purchasing agent shall make a written finding stating the reasons for the rejection.

**Sec. 3-2-6. – Changes to bids after submission.**

- (1) The purchasing agent may allow a bidder to correct an immaterial error in a bid.
- (2) The purchasing agent may not allow a bidder to make a change to a bid that is prejudicial to the competition. Changes that may be considered prejudicial to the competition include allowing a bidder to:
  - a. correct a deficiency, inaccuracy, or mistake that is not an immaterial error;
  - b. submit documents that the solicitation required to be submitted with the bid;
  - c. submit a bid that is late;
  - d. remedy a cause for a bidder being considered to be not responsible or a bid not responsive; or

- e. correct a defect or inadequacy resulting in a determination that a bidder's bid does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds established in the solicitation.
- (3) Bidders may not change the total bid price after the bids have been opened; however, the purchasing agent may negotiate the total price and the specific terms of the contract after the decision to award has been made.
- (4) In the event all bids exceed available funds and time or economic constraints preclude solicitation of a reduced scope of work, the purchasing agent may negotiate changes in the scope of work with the low bidder in order to bring the bid amount within the amount of available funds.

**Sec. 3-2-7. – Evaluation of bids.**

- (1) The purchasing agent shall evaluate each bid using the objective criteria described in the invitation for bids, which may include:
  - a. experience;
  - b. performance ratings;
  - c. inspection;
  - d. testing;
  - e. quality;
  - f. workmanship;
  - g. time and manner of delivery;
  - h. references;
  - i. financial stability;
  - j. cost;
  - k. suitability for a particular purpose;
  - l. whether the bidder has its principal place of business in Weber County;
  - m. the bidder's work site safety program, including any requirement that the bidder imposes on subcontractors for a work site safety program; or
  - n. other objective criteria specified in the invitation for bids.
- (2) Criteria not described in the invitation for bids may not be used to evaluate a bid.

**Sec. 3-2-9. – Tie bids.**

- (1) As used in this section, “tie bid” means the lowest responsive responses of responsible bidders are identical in price.
- (2) The purchasing agent shall resolve a tie bid by:
  - a. awarding the tie to the bidder who:
    - i. is closest to the point of delivery;
    - ii. received the previous award; or
    - iii. will provide the earliest delivery date;
  - b. requesting best and final offers under Section 3-4-3; or
  - c. by any other reasonable method of resolving a tie.
- (3) The method chosen to resolve a tie shall be at the sole discretion of the purchasing agent.

**Sec. 3-2-10. – Award or cancellation of a bid.**

- (1) The purchasing agent shall:
  - a. recommend that the board of county commissioners award a purchase order or contract as soon as practicable to the responsible bidder who submits the lowest responsive bid that meets the objective criteria described in the invitation for bids; or
  - b. cancel the invitation for bids, in whole or in part, without awarding a purchase order or contract.
- (2) If the purchasing agent cancels an invitation for bids without awarding a purchase order or contract, the purchasing agent shall provide written justification for the cancellation to all bidders.

**CHAPTER 3. – Request for Proposals.**

**Sec. 3-3-1. – Policy of use.**

- (1) A request for proposals should be used when cost is not the major factor in determining the award of a procurement.

**Sec. 3-3-2. – Publication and contents of the request for proposals.**

- (1) The request for proposals process begins when the purchasing agent publishes a request for proposals. The purchasing agent shall publish a request for proposals to the maximum extent practicable to promote fair competition. The purchasing agent shall ensure that it is

published for at least seven days before the day of the deadline for submission of a proposal.

- (2) A request for proposals shall:
  - a. be prepared by the acquiring entity;
  - b. to the extent practicable, provide a full description of the goods and services sought and a full scope of work;
  - c. provide information on how to contact the purchasing agent regarding the solicitation;
  - d. state the objective and subjective criteria that will be used to evaluate the proposals;
  - e. provide information as to how cost and other evaluation factors will be scored by the evaluation committee;
  - f. state the period of time during which proposals will be accepted;
  - g. provide instructions for submitting a proposal.

**Sec. 3-3-3. – Proposal opening and acceptance.**

- (1) The purchasing agent shall open the proposals after the expiration of the time for submission of proposals as indicated in the request for proposals.
- (2) Proposals shall be accepted without alteration or correction, except as otherwise authorized by this title.
- (3) The purchasing agent may not accept a proposal after the time for submission of proposals has expired.
- (4) The purchasing agent shall remove any cost information from the proposals and then submit them to an evaluation committee.

**Sec. 3-3-4. – Clarifying information in a proposal.**

- (1) The purchasing agent may make a written request to a bidder to clarify information contained in a proposal at any time.

**Sec. 3-3-5. – Rejecting a proposal.**

- (1) The purchasing agent may reject a proposal for the following reasons:
  - a. a violation of this title by the bidder who submitted the proposal;
  - b. a violation of a requirement of the request for proposals;
  - c. unlawful or unethical conduct by the bidder who submitted the proposal;

- d. the proposal is not responsive or the proposal is submitted by a bidder who is not responsible;
  - e. a change in a bidder's circumstance that, had the change been known at the time the proposal was submitted, would have caused the proposal to be rejected or;
  - f. the bidder has had a previous contract with the county that was cancelled.
- (2) If the purchasing agent rejects a proposal, the purchasing agent shall make a written finding stating the reasons for the rejection.

**Sec. 3-3-6. – Changes to proposals after submission.**

- (1) The purchasing agent may allow a bidder to correct an immaterial error in a proposal.
- (2) The purchasing agent may not allow a bidder to make a change to a proposal that is prejudicial to the competition. Changes that may be considered prejudicial to the competition include allowing a bidder to:
- a. correct a deficiency, inaccuracy, or mistake that is not an immaterial error;
  - b. submit documents that the solicitation required to be submitted with the proposal;
  - c. submit a proposal that is late;
  - d. remedy a cause for a bidder being considered to be not responsible or a proposal not responsive; or
  - e. correct a defect or inadequacy resulting in a determination that a bidder's proposal does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds established in the solicitation.
- (3) Bidders may not change the total proposal price after the proposals have been opened; however, the purchasing agent may negotiate the total price and the specific terms of the contract after the decision to award has been made.
- (4) In the event all proposals exceed available funds and time or economic constraints preclude solicitation of a reduced scope of work, the purchasing agent may negotiate changes in the scope of work with the bidder that was selected by the evaluation committee in order to bring the proposal amount within the amount of available funds.

**Sec. 3-3-7. – Evaluation of proposals.**

- (1) The purchasing agent shall appoint an evaluation committee of at least three members to evaluate proposals received in response to a request for proposals.

- (2) Evaluation committee members should have at least a general familiarity with or basic understanding of:
  - a. the technical requirements relating to the type of goods and services that is the subject of the procurement; and
  - b. the need that the goods and services are intended to address.
- (3) Evaluation committee members should:
  - a. not have a conflict of interest with any of the bidders;
  - b. be able to fairly evaluate each proposal;
  - c. not contact or communicate with a bidder concerning the procurement outside the official evaluation committee process; and
  - d. participate in the evaluation in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.
- (4) The evaluation committee shall evaluate proposals in accordance with any process described in the request for proposals.
- (5) The evaluation committee shall reject a proposal if it is not responsive or if the proposal was submitted by a bidder who is not responsible.
- (6) The evaluation committee shall evaluate each proposal that has not been disqualified from consideration using the evaluation criteria described in the request for proposals.
- (7) Criteria not described in the request for proposals may not be used to evaluate a proposal.
- (8) Evaluation committee members are prohibited from knowing or having access to information relating to the cost of a proposal until after the evaluation committee submits its recommendation to the purchasing agent based on the scores of all criteria other than cost. The purchasing agent may waive this prohibition by signing a written statement indicating why waiving the prohibition is in the best interests of the county.
- (9) An evaluation committee may not change its final recommended scores after the evaluation committee has submitted those scores to the purchasing agent.
- (10) The deliberations and other proceedings of an evaluation committee may be held in private.
- (11) At the conclusion of the evaluation committee's evaluation process, the evaluation committee shall prepare and submit to the purchasing agent a written statement that:

- a. contains the scores for each proposal based on the criteria stated in the request for proposals;
  - b. recommends a proposal for an award of a purchase order or contract, if the evaluation committee decides to recommend a proposal; and
  - c. explains how the recommended proposal provides the best value to the county.
- (12) The purchasing agent shall factor in the cost of the proposals in accordance with the cost evaluation criteria established in the request for proposals.

**Sec. 3-3-8. – Tie proposals.**

- (1) The purchasing agent shall resolve a tie between proposals by:
- a. awarding the tie to the bidder who:
    - i. is closest to the point of delivery;
    - ii. received the previous award; or
    - iii. will provide the earliest delivery date;
  - b. requesting best and final offers under Section 3-4-3; or
  - c. any other reasonable method of resolving a tie.
- (2) The method chosen to resolve a tie shall be at the sole discretion of the purchasing agent.

**Sec. 3-3-9. – Award or cancellation of proposal.**

- (1) The purchasing agent shall:
- a. recommend that the board of county commissioners award the purchase order or contract as soon as practicable to the bidder selected by the evaluation committee; or,
  - b. cancel the request for proposals, in whole or in part, without awarding a purchase order or contract.
- (2) If the purchasing agent cancels a request for proposals without awarding a purchase order or contract, the purchasing agent shall provide written justification for the cancellation to all bidders.

**CHAPTER 4. – Supplemental Procurement Procedures.**

**Sec. 3-4-1. – Request for information.**

- (1) As used in this section, “request for information” means a nonbinding process through which a procurement unit requests information, comments, or suggestions relating to goods and services.

- (2) The purchasing agent may issue a request for information before issuing a solicitation.
- (3) A request for information is not a procurement process and may not be used to: (i) negotiate fees; (ii) make a procurement; or (iii) enter into a contract.
- (4) A response to a request for information is not an offer and may not be accepted to form a binding contract.
- (5) The purchasing agent, after receiving pricing information in response to a request for information, shall ensure that an individual who serves on an evaluation committee to evaluate proposals that include a proposal as to which the pricing information applies does not have access to the pricing information, except as provided in Subsection 3-3-7(8).
- (6) A record containing information submitted to or by a governmental entity in response to a request for information may be a protected record under Utah Code § 63G-2-305.

**Sec. 3-4-2. – Request for qualifications.**

- (1) As used in this section, “request for qualifications” means a process used to solicit information about the qualifications of a person interested in responding to a potential procurement.
- (2) The purchasing agent may issue a request for qualifications before issuing a solicitation in order to establish a list of qualified bidders from which further responses may be sought.
- (3) The request for qualifications shall state that:
  - a. the procurement process will consist of multiple stages;
  - b. the request for qualifications stage is the first stage and is for prequalification only;
  - c. a bidder may not submit any pricing information in the first stage; and
  - d. a bidder may only participate in subsequent stages if the bidder prequalifies in the previous stage.
- (4) The request for qualifications process shall follow the applicable procedures, as determined by the purchasing agent, in the request for proposals process under chapter 3 of this title except that the bidders that are selected will be advanced to the next stage instead of being awarded a purchase order or contract.
- (5) A bidder is not qualified to advance to the next stage unless the bidder:



- a. is responsible; and
  - b. submitted a response that meets the minimum mandatory requirements, evaluation criteria, and any applicable score thresholds set forth in the request for qualifications.
- (6) By itself, the request for qualifications process may not be used to (i) award a contract, (ii) solicit costs, pricing, or rates, or (iii) negotiate fees.

**Sec. 3-4-3. – Best and Final Offers**

- (1) The best and final offer process established in this section may be used in any procurement process.
- (2) Subject to Subsection (3), the acquiring entity may request best and final offers from responsible bidders:
- a. only with the approval of the purchasing agent; and
  - b. if:
    - i. no single response adequately addresses all the specifications stated in the solicitation;
    - ii. all responses are unclear or deficient in one or more respects;
    - iii. all proposed costs exceed the acquiring entity’s available funding; or
    - iv. two or more responses receive an identical evaluation score that is the highest score.
- (3) A best and final offer may only be submitted by a responsible bidder that has submitted a responsive response.
- (4) The best and final offer process may not be used to change:
- a. a determination that a bidder is not responsible to a determination that the bidder is responsible; or
  - b. a determination that a response is not responsive to a determination that the response is responsive.
- (5) This Subsection (5) applies if a request for best and final offers is issued because all proposed costs exceed the acquiring entity’s available funding.
- a. The acquiring entity may, in the request for best and final offers:
    - i. specify the scope of work reductions the acquiring entity is making in order to generate responses that are within the available funding; or

- ii. invite bidders submitting best and final offers to specify the scope of work reductions being made so that the reduced proposed cost is within the available funding.
  - b. The acquiring entity is not required to accept a scope of work reduction that a bidder has specified in the bidder's best and final offer.
  - c. A reduction in the scope of work may not:
    - i. eliminate a component identified in the solicitation as a minimum mandatory requirement; or
    - ii. alter the nature of the original solicitation to the extent that such solicitation would have likely attracted a significantly different set of bidders submitting bids in response to the solicitation.
- (6) If a request for best and final offers is issued because two or more responses received an identical evaluation score that is the highest score:
  - a. the request may be issued only to bidders who submitted a response receiving the highest score; and
  - b. a bidder submitting a best and final offer may only revise the bidder's proposed cost.
- (7) In a request for best and final offers, the acquiring entity shall:
  - a. clearly specify:
    - i. the issues that the acquiring entity requests the bidders to address in their best and final offers; and
    - ii. how the best and final offers will be evaluated; and
  - b. establish a deadline for a bidder to submit a best and final offer.
- (8) In a best and final offer, a bidder:
  - a. may address only the issues described in the request for best and final offers; and
  - b. may not correct a material error or deficiency in the bidder's response unless the conditions of Subsections (2)(b)(i) or (2)(b)(ii) are met.
- (9) After the deadline for submitting best and final offers has passed, the purchasing agent or, if applicable, the evaluation committee shall evaluate the best and final offers submitted using the criteria described in the request for best and final offers and the solicitation.

- (10) The purchasing agent or, if applicable, the evaluation committee may not consider a best and final offer that the acquiring entity has not requested under this section.

**Sec. 3-4-4. – Extension of a contract without engaging in a procurement process.**

- (1) The county may extend an existing contract without engaging in a procurement process
- a. for a period of time not to exceed 120 days if:
    - i. the extension is necessary to:
      - 1. avoid a lapse in a government service, or
      - 2. to mitigate a circumstance that is likely to have a negative impact on public health, safety, welfare, or property, and
    - ii. the county is engaged in a procurement process for the goods or services that are the subject of the contract being extended; or
  - b. for the period of a protest, appeal, or court action, if the protest, appeal, or court action is the reason for delaying the award of a new contract.

**Sec. 3-4-5. – Emergency procurement.**

- (1) The county may obtain goods and services without engaging in a procurement process if:
- a. the purchasing agent determines that the procurement is necessary to:
    - i. avoid a lapse in a critical government service;
    - ii. mitigate a circumstance that is likely to have a negative impact on public health, safety, welfare, or property, including an emergency or major disaster declared by the governor or the President of the United States;
    - iii. protect the legal interests of the county; or
    - iv. meet an immediate and serious need for supplies, services, or construction that cannot be met through a procurement process.
- (2) An emergency procurement shall be limited to those supplies, services, or construction items necessary to meet the emergency.
- (3) The purchasing agent shall ensure that procurements made under this chapter are made with as much competition as practicable and that federal laws and regulations are followed to ensure the availability of federal funds.
- (4) After the emergency has abated, the purchasing agent shall prepare a written document explaining the emergency condition that necessitated the emergency procurement and include the document in the procurement file.

**Sec. 3-4-6. – Procurement of goods or services without engaging in a solicitation.**

- (1) As used in this section, “transitional costs”
  - a. means the cost of changing:
    - i. from an existing provider of a good or service to another provider of that good or service; or
    - ii. from an existing type of good or service to another type; and
  - b. includes:
    - i. training costs;
    - ii. conversion costs;
    - iii. compatibility costs;
    - iv. costs associated with system downtime;
    - v. disruption of service costs;
    - vi. staff time necessary to implement the change;
    - vii. installation costs; and
    - viii. ancillary software, hardware, equipment, or construction costs; and
  - c. does not include:
    - i. the costs of preparing for or engaging in a procurement process; or
    - ii. contract negotiation or drafting costs.
- (2) The county may obtain goods or services without engaging in a solicitation if the purchasing agent determines that:
  - a. there is only one source for the goods and services;
  - b. the goods and services are available to the county through a state contract;
  - c. the goods and services are currently being provided to any federal, state, or local unit of government where such goods and services were acquired through the government entity’s established procurement process, and engaging in a procurement process required under this title would yield the same or substantially similar result as determined by the purchasing agent;
  - d. the goods and services have been selected by a procurement organization that specializes in procurements for governmental entities, and the selection process used by the procurement organization satisfies the purposes of this title;

- e. based on the advice of appropriate technical experts or county agencies, the goods and services are of a nature that procurement without solicitation is necessary to ensure standardization of equipment or services, and that such standardization is necessary to maintaining system integrity, current warranties, ongoing maintenance, or continuity of service;
- f. transitional costs are a significant consideration in selecting the goods and services and the results of a cost-benefit analysis demonstrate that transitional costs are unreasonable or cost-prohibitive, and the award of a contract without engaging in a solicitation is in the best interest of the county.
- g. the goods and services are made available by a contractor, architect, or engineer where:
  - i. the contractor, architect, or engineer was originally selected through a procurement process to work on a construction project for the county;
  - ii. the construction project was completed within the past five years;
  - iii. additional work needs to be done that is reasonably related to the work that was performed under the original contract ; and
  - iv. in the opinion of the purchasing agent, hiring the contractor, architect, or engineer that recently worked on the project will result in a cost savings to the county or an improvement in work product as a result of the technical expertise that was acquired by the contractor, architect, or engineer in their original work on the project; or
- h. the goods and services are not adapted to award through a solicitation, such as for the following items:
  - i. medicines or medical supplies which are not generic in nature;
  - ii. the services of an individual who possesses a high degree of professional skill where the ability or fitness of the individual plays an important part;
  - iii. publication of legal notices, ordinances, resolutions, and other legal advertising;
  - iv. the private placement of bonds, tax anticipation notes, or other instruments of indebtedness;

- v. utility services such as water, electricity, gas, telephone, internet, except when alternative supplies or services are available;
- vi. subscriptions, media, magazines, books, journals, reference works, periodicals, testing materials, and similar articles of an educational or informational nature; or
- vii. other goods and services that are not adapted to award through a solicitation as determined by the purchasing agent on a case-by-case basis.

## CHAPTER 5. – Protests.

### **Sec. 3-5-1. – Filing a protest.**

- (1) A person who is aggrieved in connection with a solicitation or an award of a purchase order or contract may file a written protest with the purchasing agent.
- (2) A protest may not be filed more than seven calendar days after the protester knows, or should have known, that the county awarded the purchase order or contract.
- (3) A person who fails to file a protest within the time prescribed may not file a protest with the purchasing agent or file an action or appeal challenging a solicitation or an award of a purchase order or contract before the board of county commissioners, a court, or any other forum.

### **Sec. 3-5-2. – Contents of a protest.**

- (1) A protestor shall include in a protest:
  - a. the protestor's name, mailing address, email address, and phone number; and
  - b. a concise statement of the facts and evidence that demonstrates how the protestor has been aggrieved in connection with a solicitation or an award of a purchase order or contract.
- (2) A protest may not be considered unless it contains facts and evidence that, if true, would establish:
  - a. a violation of this title or other applicable law or rule;
  - b. the county's failure to follow a provision of a solicitation;
  - c. an error made by an evaluation committee;
  - d. a bias exercised by an evaluation committee or an individual committee member, excluding a bias that is a preference arising during the evaluation process because of how well a response meets the criteria in the solicitation;

- e. a failure to correctly apply or calculate a scoring criterion; or
  - f. that specifications in a solicitation are unduly restrictive or unduly anticompetitive.
- (3) A protest may not be based on:
- a. the rejection of a response due to a protestor's failure to attend or participate in a mandatory conference, meeting, or site visit held before the deadline for submitting a response;
  - b. a vague or unsubstantiated allegation; or
  - c. a claim that the protester was not provided with individual notice of a solicitation; or the person received late notice of a solicitation.
- (4) A protest may not include a request for:
- a. an explanation of the rationale or scoring of evaluation committee members; or
  - b. the disclosure of a protected record or protected information.

**Sec. 3-5-3. – Settling a protest.**

- (1) The purchasing agent may, in consultation with the attorney’s office, negotiate the terms of a settlement agreement to resolve a protest.
- (2) Settlement agreements must be approved by the board of county commissioners to be effective.

**Sec. 3-5-4. – Purchasing agent responsibilities and authority.**

- (1) If the purchasing agent determines that a protest was not filed timely or does not meet the requirements of this chapter, the purchasing agent shall dismiss the protest without holding a hearing.
- (2) If the purchasing agent determines that a protest was filed timely and meets the requirements of this chapter, the purchasing agent shall either:
  - a. uphold the protest without holding a hearing if the purchasing agent determines that the undisputed facts of the protest indicate that the protest should be upheld;
  - or
  - b. hold a hearing on the protest if there is a genuine issue of material fact or law that needs to be resolved in order to determine whether the protest should be upheld.
- (3) If a hearing is held on a protest, the purchasing agent may:
  - a. subpoena witnesses and compel their attendance at the protest hearing;

- b. subpoena documents for production at the protest hearing;
  - c. obtain additional factual information; and
  - d. obtain testimony from experts, the person filing the protest, representatives of the county, or others.
- (4) The Rules of Evidence do not apply to a protest hearing.
- (5) The purchasing agent shall:
- a. record each protest hearing; and
  - b. regardless of whether a protest hearing is held, preserve all records and other evidence relied upon in reaching the purchasing agent's written decision until the decision, and any appeal of the decision, becomes final.
- (6) The purchasing agent shall promptly issue a written decision regarding any protest, unless the protest is settled by mutual agreement. If settled by mutual agreement, the purchasing agent shall provide a copy of the agreement to the board of county commissioners for approval.
- (7) The purchasing agent's decision shall:
- a. state the reasons for the action taken; and
  - b. inform the protestor of the right to appeal as provided in this chapter.
- (8) The purchasing agent shall mail, email, or otherwise provide a copy of the decision to the protestor. If the decision is mailed, the purchasing agent shall certify the mailing to ensure proof of delivery.
- (9) A determination under this section by the purchasing agent regarding an issue of fact may not be overturned on appeal unless the decision is arbitrary and capricious or clearly erroneous.

**Sec. 3-5-5. – Appealing the purchasing agent's decision.**

- (1) The protestor may appeal the purchasing agent's decision to the Weber County board of county commissioners.
- (2) A protester appealing the purchasing agent's decision must submit a written notice of appeal to the purchasing agent within seven calendar days after the purchasing agent's decision is:
- a. personally served on the protestor or the protestor's representative; or



- b. delivered by mail or email to the address or email address provided by the protestor under Section 3-5-2(1).
- (3) If the purchasing agent does not issue a written decision within 30 calendar days after the day on which the protest was filed with the purchasing agent, the protestor may proceed as if an adverse decision had been received.
- (4) The purchasing agent shall, within seven calendar days, notify the board of county commissioners when a notice of appeal is filed. The purchasing agent shall provide the board of county commissioners with the protest record.
- (5) The board of county commissioners shall review the protest decision as follows:
- a. Commissioners shall not engage in ex parte communications with either the appellant or the purchasing agent regarding the substance of the appeal.
  - b. The board shall hold an appeal hearing during a public work session or a regularly scheduled county commission meeting.
  - c. The purchasing agent shall send written notice by certified mail of the date and location of the appeal hearing to the protestor within 14 calendar days of receiving notice of the appeal.
  - d. All three commissioners must be present during the hearing.
  - e. The board shall allow each party a fair opportunity to present arguments and evidence and to respond to the other party's arguments and evidence.
  - f. Parties may represent themselves or may be represented by any other person.
  - g. Following the parties' presentations, the board may conduct closed deliberations pursuant to Section 52-4-205(1)(m) of the Open and Public Meetings Act.
  - h. After deliberating, the board shall re-open the appeal hearing to the public.
  - i. The chair shall call for a motion regarding the board's decision, and any member of the board may make such a motion. If another member seconds the motion, then the board shall discuss and vote on the motion.
  - j. The board may pass a motion to postpone ruling until after the board has had time for further research and consideration, in which case no decision will be announced at the appeal hearing.
  - k. The final decision of the board must be agreed on by at least two members.

- l. No later than 10 calendar days after an appeal hearing, the board shall issue a written order upholding, amending, or reversing the purchasing agent's decision and shall send a copy to all parties.
- m. If the board amends or reverses the decision of the purchasing agent after finding that the decision is arbitrary and capricious or clearly erroneous, the board:
  - i. shall remand the matter to the purchasing agent to cure the problem or render a new decision;
  - ii. may recommend action that the purchasing agent should take; and
  - iii. may not order that a contract be awarded to a certain person or that a contract or solicitation be cancelled.
- n. The order shall include a notice of appeal rights stating that any aggrieved party may appeal to the district court.

**Sec. 3-5-6. – Finality of decisions.**

A decision described in this chapter is final and conclusive unless the decision is stayed or reversed on appeal.

**Sec. 3-5-7. – Appeal to the district court.**

- (1) An appeal to the district court must be made within seven calendar days after the issuance of the board's written decision.
- (2) The district court may not hear the matter as a trial de novo and may not overturn a finding, dismissal, or decision unless the finding, dismissal, or decision is arbitrary and capricious or clearly erroneous.
- (3) The district court is encouraged to give an appeal under this section priority and consider the appeal and render a decision in an expeditious manner.

**CHAPTER 6. – Contracts and Purchase Orders.**

**Sec. 3-6-1. – Approval of purchase orders.**

- (1) The purchasing agent shall prepare a purchase order form that shall be used whenever goods or services are acquired using a purchase order.
- (2) The county attorney's office shall review the purchase order form annually and approve it as to form and legality.
- (3) The acquiring entity shall prepare purchase orders and obtain any required signatures.

- (4) Purchase orders for \$20,000 or less shall be approved and signed by the purchasing agent and then ratified by the board of county commissioners.
- (5) Purchase orders for \$20,001 or more shall be approved by the board of county commissioners and then signed by the purchasing agent.

**Sec. 3-6-2 – Approval of contracts.**

- (1) The acquiring entity shall prepare contracts and obtain any required signatures.
- (2) Except as otherwise provided in this title, the acquiring entity shall submit each contract to the county attorney’s office for review.
- (3) The county attorney’s office shall review each contract submitted by the acquiring entity and attempt to resolve any legal concerns regarding the contract language. If the concerns cannot be resolved, the county attorney’s office shall make a note of the concerns on the contract approval sheet. Following legal review, the county attorney’s office shall forward the contract to the purchasing agent.
- (4) The purchasing agent shall confirm that any required procurement processes were followed and then submit the contracts to the clerk/auditor’s office.
- (5) The clerk/auditor shall verify that the acquiring entity has sufficient funds in its budget and then submit the contract to the appropriate board for approval.
- (6) All contracts shall be sent to the board of county commissioners for approval, except that contracts for expenditures from the library fund shall be sent to the library board for approval, then to the board of county commissioners for ratification.

**Sec. 3-6-3. – Approval of standard form contracts.**

- (1) The following standard form contracts are exempt from the requirement of being approved by the board of county commissioners in county commission meetings. Such contracts may be approved and signed by the acquiring entity head or elected official:
  - a. The Library may approve library facility and equipment rental contracts and contracts for the purchase, rental, or sale of books, magazines, periodicals, films, and similar materials of an educational or instructional nature for county library use.
  - b. Culture, Parks, and Receptions may approve standard facility and equipment rental contracts, catering contracts, and recreational program contracts that are

based on fees, formulas, or standard promotional packages that have been approved by the board of county commissioners.

- (2) Standard form contracts shall initially be reviewed and approved by the county attorney's office as to form and legality.
- (3) Any alteration of the standard form language without approval of the attorney shall render the contract void and without effect. This condition shall be stated in an appropriate part of the contract.
- (4) The title of standard form contracts shall include the designation "Standard Contract Form" and the date the standard form was approved by the attorney.
- (5) The attorney shall maintain a file of all standard form contracts and review them annually for approval as provided herein. This requirement does not include executed standard form contracts.
- (6) Standard form contracts that have been approved by the attorney do not need to be approved by the attorney for individual procurements.
- (7) Once all parties have signed a standard form contract, the acquiring entity shall forward the executed contract to the clerk/auditor for retention under Sec. 3-6-4

**Sec. 3-6-4. – Retention of records.**

- (1) A copy of each fully executed contract shall be maintained by the clerk/auditor, who shall act as the repository for all county contracts.
- (2) The purchasing agent will retain on file the original requisition, solicitation, evidence of publication, all responses , a copy of any purchase order which is prepared and approved, and any other documents or correspondence relating to the acquisition.
- (3) All records referred to under this section shall be retained as long as prescribed in the retention schedule adopted by the county pursuant to the Utah Government Records Access and Management Act (GRAMA) (U.C.A. 1953, § 63G-2-101 et seq.).

**Sec. 3-6-5. – Contract amendments.**

- (1) Contracts may only be amended pursuant to the provisions of the original agreement.
- (2) Any amendment to a contract, including change orders, must be authorized and processed according to the requirements of this title.
- (3) Amendments must be in writing and must expressly specify all terms and conditions amended and which terms and conditions remain unchanged.

This Ordinance shall be effective 15 days after publication in the Standard Examiner.

PASSED, ADOPTED AND A SYNOPSIS ORDERED PUBLISHED this \_\_\_\_\_ day of  
December 2021.

BOARD OF COUNTY COMMISSIONERS  
OF WEBER COUNTY

By \_\_\_\_\_  
James H. "Jim" Harvey, Chair

Commissioner Harvey voted \_\_\_\_\_  
Commissioner Froerer voted \_\_\_\_\_  
Commissioner Jenkins voted \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Ricky Hatch, CPA  
Weber County Clerk/Auditor