

SAN JUAN COUNTY UTAH
ORDINANCE NO 2020- 04

AN ORDINANCE ADOPTING AN UPDATED SAN JUAN COUNTY PURCHASING POLICY

WHEREAS, the Board of San Juan County Commissioners is adopting Ordinance 2020.XX adopting an updated Purchasing Policy to ensure fair and equitable treatment of all persons who wish to, or do conduct business with San Juan County;

WHEREAS, the policy establishes guidelines for the purchasing of goods and services that is consistent with the provisions of Utah Code and related legal requirements, while also allowing the County to timely and efficiently process such purchases;

WHEREAS, a policy to provide for the greatest possible economy in the County's procurement activities. To foster effective broad-based competition within the free enterprise system to ensure that the County will receive the best possible services or products at the lowest possible price and/or the most responsive price based on quality of workmanship and performance;

WHEREAS, it is the intention of San Juan County to get the best value on purchases and at the same time recognizing that the lowest price provider does not always constitute the best value to San Juan County; and

WHEREAS, the Board of San Juan County Commissioners desires to authorize a Purchasing Agent, as more fully set forth in the Purchasing Policy attached hereto as Exhibit A, to purchase goods and services up to specific amounts without the need for prior approval after specific appropriation budgets have been approved by the Board of San Juan County Commissioners.

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE COUNTY LEGISLATIVE BODY OF SAN JUAN COUNTY, UTAH, THAT; the Board of San Juan County Commissioners

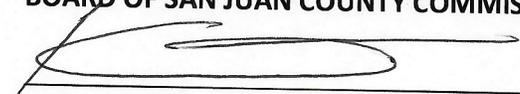
PASSED, ADOPTED, AND APPROVED by the Board of San Juan County Commissioners this 18th day of February, 2020, by the following vote:

Those voting aye:

Those voting nay:

Those absent or abstaining:

BOARD OF SAN JUAN COUNTY COMMISSIONERS


Kenneth Maryboy, Chair

ATTEST:

John David Nielson
John David Nielson, Clerk/Auditor

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Exhibit A

San Juan County Purchasing Policy

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San Juan County Purchasing Policy

A. The underlying purposes of this policy are:

1. To ensure fair and equitable treatment of all persons who wish to, or do conduct business with San Juan County.
2. To provide for the greatest possible economy in the County's procurement activities.
3. To foster effective broad-based competition within the free enterprise system to ensure that the County will receive the best possible services or products at the lowest possible price and/or the most responsive price based on quality of workmanship and performance.
4. It is the intention of San Juan County to get the best value on purchases. The lowest price provider does not always constitute the best value to San Juan County. When purchasing equipment or services, considerations should include product quality, product support, service provider experience, maintenance fees, renewal fees, and end-user application of the purchase. In instances in which the low quote is not selected, the Department must provide written justification for not selecting the lowest quote and include this written justification with the purchasing record.

B. Compliance – Exemptions from this policy:

1. This policy shall not prevent the County from complying with the terms and conditions of any grant, gift or bequest that is otherwise consistent with law.
2. When procurement involves the expenditure of Federal and/or State funds the County shall comply with all applicable Federal and/or State laws and regulations.

C. Definitions:

1. Alternate Procurement Method: Those methods of procuring goods and services allowed, beside from sealed bidding.
2. Best Value: The basis for awarding contracts for services to the offeror which optimizes quality, cost and efficiency, among responsive and responsible offerors. Such basis shall reflect, wherever possible, objective and quantifiable analysis.
3. Blanket Purchase Order: A purchase order containing multiple delivery dates over a period of time, often negotiated to take advantage of predetermined pricing; normally used when there is a recurring need for goods.
4. Board: The San Juan County Board of Commissioners.
5. Business: Business means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, vendor, contractor or any other private legal entity.
6. Contract: A written document that includes an agreement between the San Juan County Board of Commissioners and another party regardless of whether or not the

document is labeled or characterized as a “contract”, “agreement”, “memorandum”, “letter of understanding”, “statement of understanding”, “grant application”, “donation form” or other legally binding document. All county contracts shall be approved as to content and form by the San Juan County Attorney.

7. Emergency Purchases: “If the governing body determines that a natural disaster or fiscal emergency exists, and that the expenditure of money in excess of San Juan County general fund budget is necessary to respond to the natural disaster or fiscal emergency, San Juan County Board of Commissioners may make expenditures and incur deficits that are reasonably necessary to meet the natural disaster or fiscal emergency” (see U.C.A. 173627).
8. Encumbrance: San Juan County “shall use an encumbrance system or other budgetary controls to ensure that no expenditure is made for any item of an appropriation unless there is a sufficient unencumbered balance in the appropriation and available funds, except in cases of an emergency” (U.C.A. 173619).
9. Equipment: Tangible property (other than land and buildings) used in the operation of a department.
10. Invoice: A formal billing, submitted by a vendor, showing the amount due and terms of payment for supplies delivered or services rendered.
11. Professional Services: Those services provided to San Juan County, including those that involve specialized expertise, use of professional judgment, and/or a high degree of creativity. The individual or company may be based on qualifications to include, but not limited to specialized skills, education and training, experience, demonstrated effectiveness, judgment and integrity. These qualifications are not necessarily found in the individual or company that offers the lowest price.
12. Public Works Projects: All works constructed for public use, protection, or enjoyment, ordinarily of a fixed nature, such as buildings, docks, canals, waterworks, highways, roads etc., and shall apply to those commodities or projects involving labor or both materials and labor and shall include such items as construction, paving and repair contracts.
13. Quote: A stated price by a vendor for goods, services, or equipment. Quotes may be provided by fax, mail, email, or by printing listed prices of vendor websites.
14. Request for Proposals (RFP): A formal competitive solicitation made to potential vendors in which vendors propose the best method or solution to a clearly defined County need.
15. Request for Quotes (RFQ): The process to request information, where quotes are obtained from vendors without formal advertising or receipt of sealed bids. Used where price competition is desired, but the situation does not require competitive sealed bids, small or emergency purchases.
16. Requisition: A request to the Purchasing Agent for the purchase of one or more goods or services necessary to carry on or improve a particular function of San Juan County.

17. Sole Source Purchase: A procurement method that allows, under certain conditions, for procuring goods or services from a single source without soliciting bids from multiple sources.
18. Specifications: A written description of the physical functional characteristics needed commodities and/or services setting forth, in a clear concise manner, the performance and/or physical characteristics of the commodities and/or services to be purchased, and the circumstances under which the purchase shall be made.
19. State Contract: Any contract entered into by the State of Utah from which counties within the State of Utah are authorized to make purchases from and pursuant to the terms of said contract.
20. Vendor: A supplier of goods or services to San Juan County.

D. Ethics

Purpose: To avoid both direct conflicts as well as the appearance of impropriety in purchasing and procurement of goods and services in San Juan County. Questions regarding this section should be directed to the San Juan County Attorney's Office.

1. San Juan County elected officials, employees, and agents shall procure goods, equipment, and services and shall make purchases with County funds in accordance with all applicable federal, state and local laws, rules and regulations, (U.C.A. 6716 Utah Public Officers' and Employees' Ethics Act).
2. San Juan County elected officials, employees, and agents shall recuse themselves and shall not participate in selecting, awarding, or administering procurement, purchasing, or procurement and purchasing if, he or she knew or should have known, any of the following has a financial, or other interest, in a prospective company, contractor, vendor, entity, or person considered to be paid by San Juan County in exchange for goods, equipment, or services:
 - a. The elected official, employee or agent;
 - b. Any member of his/her immediate family ("immediate family" is defined wife, husband, child, mother, father, brother, sister, mother-in-law, father-in-law, grandmother, grandfather, grandchild, brother-in-law, sister-in-law, daughter-in-law, son-in-law, stepchild, stepmother and stepfather");
 - c. His or her partner or significant other; or
 - d. An organization which employs any of the above, which any of them have any arrangement concerning prospective employment, or any of them have an independent contractor relationship or similar arrangement.
3. No personal benefit should be incurred by any individual as a result of purchases made using public funds regardless of their source; i.e. Federal, State or Local funds.
4. San Juan County elected officials, employees, or agents should neither solicit, nor accept gratuities, favors, or anything of monetary value from vendors or potential

vendors or from any County purchasing action. Strict compliance with the San Juan County Personnel Policy regarding professional conduct should be observed.

5. San Juan County elected officials, employees, and agents should demonstrate appropriate duty of care when engaging in fiduciary activities, including obtaining and assessing appropriate materials/documentation in a judicious manner to insure the promotion of the best interest of San Juan County.
6. No purchase shall be intentionally or knowingly be split or divided into two or more smaller purchases with the intent of avoiding the competitive bidding process or other requirements contained in this policy. This includes: making two or more separate purchases, dividing an invoice or purchase order into two or more invoices or purchase orders, or making smaller purchases over a period of time. A person who divides purchases may be subject to the criminal penalties described in Section U.C.A 63G6a2404.3.
7. All San Juan County elected officials, employees, and agents shall comply with the provisions set for in [Utah Code Annotated Title 67, Chapter 16 – Utah Public Officers’ and Employees’ Ethics Act](#).
8. Cost-plus-a-percentage-of-cost contracts are prohibited (see U.C.A 63G-6a-1205). Subject to the limitations of this section, any type of contract which will promote the best interest of the County may be used, provided that the use of a cost-plus-a-percentage-of-cost is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the County than any other type of contract or that it is impracticable to obtain the supplies, services, or construction required except under such a contract.

E. Purchasing Agent Authority and Duties

AUTHORITY:

Except as otherwise provided herein, the Purchasing Agent shall serve as the principal purchasing official for San Juan County. The Purchasing Agent is authorized to enforce and review of this Policy.

DUTIES:

In accordance with this Policy, the Purchasing Agent or his/her designee shall:

1. Periodically review this policy and recommend changes to be approved by the San Juan County Board of Commissioners;
2. Review and confirm that goods and services are purchased in accordance with this policy;
3. Maintain all supporting documentation (e.g. requisitions, quotes, RFPs and proposals, RFIs and responses, sole source requests, notices, correspondence);

4. Open and record RFP responses and detail the history of procurement, rationale for method of procurement, selection of contract type, selection or rejection, and the basis for price;
5. Work with the respective Department Director(s) to review approval of a bid if the cost of a good or service is expected to exceed the bid limit;
6. Work with the respective Department Director(s) to determine whether it is advantageous to bid any purchase contracts less than the statutory limits;
7. Review forms for completeness and approve or deny the request, thereby converting the requisition to a purchase order;
8. Oversee the P-Card program, including issuing cards, suspending cards, and closing cards when employees terminate;
9. Determine when open vendor accounts may be necessary and in the best interest of San Juan County, and establish terms and conditions of use for such accounts (including Sam's Club, Costco, Amazon, etc....); and
10. Oversee capital equipment purchases.

F. Department Directors or Supervisor's Responsibilities

DUTIES:

It is the responsibility of the Department Directors or Supervisors to:

1. Identify the purchases to be made by his or her department in a fiscal year, thereby constituting the annual departmental budget, pursuant to this policy and the Uniform Fiscal Procedures Act for Counties (U.C.A. 1736).
2. Determine whether it is advantageous to San Juan County to bid any contract less than what is stated in this policy;
3. Be responsible for compliance with this policy and procedure by employees within the department and delegate tasks pursuant to purchasing procedures;
4. Submit annual "Conflicts Disclosure Statements" to the San Juan County Clerk/Auditor;
5. Ensure that San Juan County does not incur sales tax charges on exempt purchases by providing vendors documentation of tax exempt status, a TC721G Exemption Certificate for Governments and Schools;
6. Maintain oversight to ensure that contracted vendors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders and inform the Purchasing Agent of any material breach of such;
7. Contact the Purchasing Agent to initiate a purchase of capital items after the annual adopted budget has passed by resolution of the San Juan County Board of Commissioners;
8. Ensure expenditures are appropriately budgeted and submit Budget Amendment

Form when necessary;

9. Determine the amount of a blanket purchase order and the length of time it will remain in effect (all purchase orders expire at the end of the calendar year);
10. Order from Vendors preapproved by the Purchasing Agent or submit a request to add new vendor to County Polaris system with appropriate back-up documentation including a copy of vendors insurance and a current and valid W-9); and
11. Approve or deny all designated invoices for payment, with the exception of self-reimbursement, which must be approved by another authorized individual in the department.

G. General Provisions

1. Purchasing Agent Designated. The Chief Administrative Officer is hereby appointed and designated as the San Juan County Purchasing Agent. The Purchasing Agent may from time to time appoint another person to undertake all or some of the duties of the Purchasing Agent set forth herein or appointed to him/her.
2. Authority to Enter into and Execute Contracts. All contracts are to be approved by the San Juan County Board of Commissioners unless otherwise as indicated here within. No department, office, advisory or policy board or other organization of San Juan County nor any officer or employee thereof, shall be empowered to execute any purchase order or contract except as specifically authorized in this ordinance or by other applicable law. All contracts in violation of this provision are considered void and may result in the personal obligation and liability of persons at fault for such violations.
3. Competitive Procurement. Unless exempted by this policy, all purchases and contracts shall be awarded on a competitive basis, as required by this Ordinance and applicable State and Federal law.
4. Participation in State Procurement Unit Agreement and Contracts. Pursuant to U.C.A. 63G6a2105, San Juan County may make purchases from or participate in state public procurement unit agreements and contracts, pursuant to the terms of said agreements and contracts without soliciting additional procurement options.
5. San Juan County purchases are not subject to sales tax. For vendors requiring documentation of tax-exempt status, a TC-712G Exemption Certificate for Governments may be obtained from the Chief Administrative Officer.
6. When procurement involves the expenditure of State or Federal funds, San Juan County shall comply with the applicable State and Federal laws and regulations.

H. Authorization Requirements for Purchases

1. Purchases up to \$1,000. All procurements of services and goods in an amount less than \$1,000 may be approved by the Department Director, provided such procurements have been budgeted for within the department and are in line with the budgeted purposes and responsibilities of said department. A Department or Division may not spend a maximum of \$50,000 in a fiscal year with an individual vendor using the small purchase limit. This rule cannot be used for ongoing services. Contracts at this limit, if required, can be executed by the Purchasing Agent. No quotes are required at this limit.
2. Purchases over \$1,000 and up to \$5,000. All procurements of services and goods in an amount over \$1,000 and up to \$5,000 must have a purchase order approved by the Department Director and the Purchasing Agent prior to initiating the purchase. Descriptions of items or services will use sufficient and descriptive terminology to allow the reviewer to understand what is being purchased and why, part numbers by themselves are not sufficient. When the individual procurement item cost is more than \$1,000 for one or more items AND the total procurement is less than \$5,000, the Department or Division must obtain competitive quotes. All purchases between this limit shall be made after obtaining a minimum of two bids. The agency must purchase the item/service from the supplier offering the lowest quote meeting specifications unless one is of a higher and better quality. Contracts at this limit can be executed by the Purchasing Agent. See Exhibit A for the required quote sheet. See Exhibit B for the required the Purchase Order.
3. Purchases over \$5,000 and up to \$15,000. All goods, services, and equipment over \$5,000.00 but less than \$15,000.00 require (at a minimum) three (3) written quotes from three (3) different vendors. Quotes may be provided by fax, mail, e-mail, or by printing listed prices from vendor websites. The Purchasing Agent may require the department to conduct an RFP to ensure pricing is competitive. A waiver of the required minimum number of quotes will be granted by the Purchasing Agent or designee upon a showing that a diligent effort was made to obtain the quotes or a Sole Source justification has been provided and approved. All quotes (and wavier, if applicable) shall be submitted electronically with the requisition or contracted award as part of the formal purchasing record. The Department Director must sign the quote selected for the procurement.

Once quotes have been obtained, the method of procurement is determined by type of expenditure and total cost, as follows:

- a) Goods/Equipment under \$10,000.00 – San Juan County Purchase Order.
- b) Goods/Equipment between \$10,000.00 and \$15,000.00 – may constitute a capital purchase and requires assistance from the Purchasing Agent and requires a San Juan County Purchase Order with appropriate terms and conditions.
- c) Services between \$5,000.00 and \$15,000 – County approved Contract is required

executed by the San Juan County Board of Commissioners unless delegated to the Purchasing Agent.

Documentation of the solicitation of three quotes or reference to the exemption of those requirements must be attached. Purchases within this range will need a County approved contract.

4. Purchases over \$15,000 and up to \$50,000. Purchases over \$15,000 require a written contract to be approved in an open meeting. Purchases between \$15,000 which are ongoing services must be put out for competitive bid with a public notice. All procurements of services and goods in an amount over \$50,000 must be put out for competitive bid with a public notice and to be prepared and approved by the Department Director, Supervisor, Purchasing Agent and San Juan County Board of Commissioners (See section of Competitive Bids for requirements).
5. Purchases over \$50,000. Acquisitions of goods, equipment or services over \$50,000.00 are subject to the following requirements, depending on type of expenditure and total cost:
 - a) Goods/Equipment/Services over \$50,000.00 – RFP and County Approved Contract.
 - b) Building Improvements over \$50,000.00 – RFP and County Approved Contract.
 - c) Road Department and Public Works Projects under \$150,000.00 – Three (3) written quotes from three (3) different vendors (see details in previous section) and County Approved Contract.
 - d) Road Department and Public Works Projects over \$150,000.00 – RFP and County Approved Contract.
6. Avoidance of approval and written contract requirements. Purchases shall not be divided into smaller purchases for the purpose of evading the approval process required by this policy, or for the purpose of avoiding the need to obtain a written contract.
7. Sole Source Procurement. Conditions For Use of Sole Source Procurement:
 - a. Sole source procurement shall be used only if a requirement is reasonably available from a single supplier. A requirement for a particular proprietary item does not justify sole source procurement if there is more than one potential bidder or offeror for that item.
 - b. Examples of circumstances which could necessitate sole source procurement are:
 - i. where the compatibility of equipment, accessories, replacement parts, or service is the paramount consideration;
 - ii. where a sole supplier's item is needed for trial use or testing;
 - iii. procurement of items for resale;

- iv. procurement of public utility services. The determination as to whether a procurement shall be made as a sole source shall be made by the purchasing agent. Each request shall be submitted in writing by the using agency. Such officer may specify the application of such determination and its duration. In cases of reasonable doubt, competition should be solicited. Any request by a using agency that a procurement be restricted to one potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.

I. Request for Proposal, Information, or Qualifications Process (RFP, RFI, RFQ)

1. Competitive Sealed Bids – When Required

- a. All procurements of goods which are reasonably anticipated to exceed \$50,000 shall be obtained by competitive sealed bidding. The San Juan County Board of Commissioners may also require competitive sealed bidding for the procurement of goods and services for any amount.
- b. In the event that bids exceed available funds and the lowest responsive and responsible bid does not exceed funds available by more than 5% (five percent), the Board may, where time or economic considerations preclude re-solicitation of work of a reduced scope, negotiate an adjustment of the bid price, including changes in the bid requirements, with the lowest responsive and responsible bidder, in order to bring the bid within the amount of available funds.
- c. Content of the Invitation for Bids.
 - i. Use. The Invitation for Bids is used to initiate competitive sealed bid procurement.
 - ii. Content. The Invitation for Bids include the following:
 1. Instructions and information to bidders concerning the bid submission requirements, including the time and closing date for submission of bids, the address of the office to which bids are to be delivered, and any other special information;
 2. The purchase description, evaluation factors, delivery or performance schedule, and inspection and acceptance requirements not included in the purchase description; and;
 3. The contract terms and conditions, including warranty and bonding or other security requirements, as applicable.
 - iii. Incorporation by Reference. The Invitation for Bids may incorporate documents by reference provided that the Invitation for Bids specifies where such documents can be obtained.
 - iv. Acknowledgment of Amendments. The Invitation for Bids shall require the acknowledgment of the receipt of all amendments issued.
 - v. Bidding Time.
 1. Bidding time is the period of time between the date of distribution of the Invitation for Bids and the date set for opening of bids. In each

case bidding time will be set to provide bidders a reasonable time to prepare their bids. A minimum of 10 calendar days shall be provided unless a shorter time is deemed necessary for a particular procurement as determined in writing by the purchasing agent.

vi. Bidder Submissions.

1. Bid Form. The Invitation for Bids shall provide a form which shall include space in which the bid price shall be inserted and which the bidder shall sign and submit along with all other necessary submissions.
2. Facsimile Bids. The Invitation for Bids may state that facsimile bids will be considered whenever they are received in hand at the designated office by the time specified for bid opening. Such facsimile or electronic mail bids shall contain specific reference to the Invitation for Bids, the time and place of delivery, and a statement that the bidder agrees to all the terms, conditions, and provisions of the Invitation for Bids. Bidders submitting facsimile bids shall submit a formal bid on the Invitation for Bids form within three days of the bid opening date or a time designated by the purchasing agent.
3. Bid Samples and Descriptive Literature.
 - a. Descriptive literature means information available in the ordinary course of business which shows the characteristics, construction, or operation of an item and assists the purchasing agency in considering whether the item meets requirements or criteria set forth in the invitation.
 - b. Bid sample means a sample to be furnished by a bidder to show the characteristics of the item offered in the bid.
 - c. Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the items bid.
4. Samples of items, when called for in the Invitation for Bids, must be furnished free of expense, and if not destroyed by testing, will upon request, be returned at the bidder's expense.
 - a. Samples submitted by the successful bidder may be held for comparison with merchandise furnished and will not necessarily be returned. Samples must be labeled or otherwise identified as called for by the purchasing agency.
5. Bid Security. Bid bonds and performance bonds or other security may be required for supply contracts or service contracts as the purchasing agent deems advisable to protect the interests of the purchasing agency. Any such requirements must be set forth in the solicitation. Bid or performance bonds should not be used as a substitute for a determination of a bidder or offeror responsibility.
6. Bid Price. Bid prices submitted in response to an invitation for bids must stand alone and may not be dependent upon a bid submitted by

any other bidder. A bid reliant upon the submission of another bidder will not be considered for award.

vii. Public Notice.

1. Distribution. Invitation for Bids or notices of the availability of Invitation for Bids shall be mailed or otherwise furnished to a sufficient number of bidders for the purpose of securing reasonable competition. Notices of availability shall indicate where, when, and for how long.
2. Invitation for Bids may be obtained; generally describe the supply, service, or construction desired; and may contain other appropriate information. (See also "Bidder Lists" section).
3. Where appropriate, the purchasing agent may require payment of a fee or a deposit for the supplying of the Invitation for Bids.
4. Publication. Every procurement in excess of \$50,000 shall be publicized in any or all of the following:
 - a. in a newspaper of general circulation;
 - b. in a newspaper of local circulation in the area pertinent to the procurement;
 - c. in industry media; or
 - d. in a government publication designed for giving public notice such as Sciquest.
5. Public Availability. A copy of the Invitation for Bids shall be made available for public inspection at the purchasing agent's office.

viii. Bidder List.

1. Purpose. Lists of qualified prospective bidders by commodity shall be electronically compiled and maintained by the Purchasing Agent or obtained by local searches on the internet or news media.
2. Public Availability. Subject to procedures established by the purchasing agent, names and addresses on bidder lists shall be available for public inspection.

ix. Pre-Bid Conferences.

1. Pre-bid conferences may be conducted to explain the procurement requirements. They shall be announced to all prospective bidders known to have received an Invitation for Bids. The conference should be held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by written amendment as provided in the "Amendments to Invitation for Bids" section and the Invitation for Bids and the notice of the pre-bid conference shall so provide. If a written summary of the conference is deemed advisable by the purchasing agent, a copy shall be supplied to all those prospective bidders known to have received an Invitation for Bids and shall be available as public record.

- d. Amendments to Invitation for Bids.
 - i. Application. Amendments should be used to:
 - 1. make any changes in the Invitation for Bids such as changes in quantity, purchase descriptions, delivery schedules, and opening dates;
 - 2. defects or ambiguities; or
 - 3. furnish to other bidder's information given to one bidder if such information will assist the other bidders in submitting bids or if the lack of such information would be equitable to other bidders.
 - ii. Form. Amendments to Invitation for bids shall be identified as such and shall require that the bidder acknowledge receipt of all amendments issued.
 - iii. Distribution. Amendments shall be sent to all prospective bidders known to have received an Invitation for Bids.
 - iv. Timeliness. Amendments shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time set for bid opening will not permit such preparation, to the extent possible such time shall be increased in the amendment or, if necessary, by telegram or telephone and confirmed in the amendment.
- e. Pre-Opening Modification of Withdrawal of Bids.
 - i. Procedure. Bids may be modified or withdrawn by written, electronic mail or telegraphic notice received in the office designated in the Invitation for Bid prior to the time set for bid opening. A telegraphic modification or withdrawal received by telephone prior to bid opening from the receiving telegraph company will be effective if the telegraph company confirms the message by sending a copy of the written telegram showing that the message was received at such office prior to bid opening.
 - ii. Disposition of Bid Security. Bid security, if any, shall be returned to the bidder when withdrawal of the bid is permitted.
 - iii. Records. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.
- f. Late Bids, Late Withdrawal, and Late Modifications.
 - i. Any bid, withdrawal, or modification received at the address designated in the Invitation for Bids after the time and date set for receipt of bids at the place designated for receipt is late. No late bid, late withdrawal, or late modification will be considered unless received before contract award, and the bid, withdrawal, or modification would have been timely but for the action or inaction of personnel directly serving the procurement activity or lateness in the delivery of the bid otherwise not attributable to the bidder's fault or negligence. The purchasing agent, in consultation with the San Juan County Attorney's Office, shall determine whether to accept a late bid, 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.
- g. Receipt, Opening, and Recording of Bids.

- i. Receipt. Upon receipt, all bids and modifications will be time stamped, but not opened. They shall be stored in a secure place until bid opening time.
 - ii. Opening and Recording. Bids and modifications shall be opened publicly, in the presence of one or more witnesses, at the time and place designated in the Invitation for Bids. The names of the bidders, the bid price, and such other information as is deemed appropriate by the purchasing agent, shall be read aloud or otherwise be made available. The opened bids shall be available for public inspection except to the extent the bidder designates trade secrets or other proprietary data to be confidential as set forth in Subsection (3) of this Section. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the nonconfidential portion of the bid. Make and model, and model or catalogue numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary.
 - iii. Confidential Data. The purchasing agent shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. If the parties do not agree as to the disclosure of data, the purchasing agent shall inform the bidders in writing what portions of the bids will be disclosed.
- h. Mistakes in Bids.
- i. If a mistake is attributable to an error judgment, the bid may not be corrected. Bid correction or withdrawal by reason of an inadvertent, nonjudgmental mistake is permissible, but at the discretion of the purchasing agent and to the extent it is not contrary to the interest of the purchasing agency or the fair treatment of the other bidders.
 - ii. Mistakes Discovered Before Opening. A bidder may correct mistakes discovered before bid opening by withdrawing or correcting the bid as provided in Section xi (Pre-Opening Modification or Withdrawal of Bids).
 - iii. Confirmation of Bid. When it appears from a review of the bid that a mistake has been made, the bidder should be requested to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted. If the bidder alleges mistake, the bid may be corrected or withdrawn if the conditions set forth in Subsection (1), (4) and (6) of this Section are met.
 - iv. Mistakes Discovered After Opening but Before Award. This Subsection sets forth procedures to be applied in three situations described in paragraphs (a), (b) and (c) below in which mistakes in bids are discovered after opening but before award.
 1. Minor Informalities. Minor informalities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or

contractual conditions is not significant. The purchasing agent may waive such informalities. Examples include the failure of a bidder to:

- a. return the number of signed bids required by the Invitation for Bids;
 - b. sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound;
 - c. acknowledge receipt of an amendment to the Invitation for Bids, but only if:
 - i. it is clear from the bid that the bidder received the amendment and intended to be bound by its terms; or
 - ii. the amendment involved had a negligible effect on price, quantity, quality, or delivery.
 - iii. Mistakes Where Intended Bid is Evident. If the mistake and the intended bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.
 - iv. Mistakes Where Intended Bid is not Evident. A bidder may be permitted to withdraw a low bid if:
 1. a mistake is clearly evident on the face of the bid document but the intended bid is not similarly evident; or
 2. The bidder submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.
 - v. Mistakes Discovered After Award. Mistakes shall not be corrected after award of the contract.
 - vi. Written Approval or Denial Required. The purchasing agent shall approve or deny, in writing, a bidder's request to correct or withdraw a bid. Such approval or denial may be so indicated on the bidder's written request for correction or withdrawal.
- i. Bid Evaluation and Award.
- i. General. The contract is to be awarded to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids. The Invitation for Bids shall set forth the requirements and criteria which will be used to determine the lowest responsive and responsible bidder. No bid shall be evaluated for any requirements or criteria that are not disclosed in the Invitation for Bids. An Invitation for Bids, a Request for Proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected, in whole or in part, when it is in the best interest of the purchasing agency, as determined by the

- purchasing agency. In the event of cancellation of the solicitation or rejection of all bids or proposals received in response to a solicitation, the reasons for cancellation or rejection shall be made a part of the bid file and shall be available for public inspection and the purchasing agency shall
1. re-solicit new bids using the same or revised specifications;
 2. or withdraw the requisition for supplies or services.
- ii. Responsibility and Responsiveness. Responsibility of prospective contractors is covered by Responsibility and Prequalification of these regulations.
 - iii. Product Acceptability. The Invitation for Bids shall set forth the evaluation criteria to be used in determining product acceptability. It may require the submission of bid samples, descriptive literature, technical data, or other material. It may also provide for:
 1. inspection or testing of a product prior to award for such characteristics as quality or workmanship;
 2. examination of such elements as appearance, finish, taste, or feel; or
 3. other examinations to determine whether it conforms with any other purchase description requirements. The acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another but only to determine that a bidder's offering is acceptable as set forth in the Invitation for Bids. Any bidder's offering which does not meet the acceptability requirements shall be rejected.
 - iv. Determination of Lowest Bidder. Bids will be evaluated to determine overall economy for the intended use, in accordance with the evaluation criteria set forth in the Invitation for Bids. Examples of such criteria include but are not limited to, transportation cost, energy cost, ownership and other identifiable costs or life-cycle cost formula. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible such evaluation factors shall:
 1. be reasonable estimates based on upon information the purchasing agency has available concerning future use; and
 2. treat all bids equitably.
 - v. Extension of Time for Bid or Proposal Acceptance. After opening bids or proposals, the purchasing agent may request bidders or offerors to extend the time during which their bids or proposals may be accepted, provided that, with regard to bids, no other change is permitted. The reasons for requesting such extension shall be documented.
 - vi. Only One Bid or Proposal Received. If only one responsive bid is received in response to an Invitation for Bids (including multi-step bidding), an award may be made to the single bidder if the purchasing agent finds that the price submitted is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for re-solicitation. Otherwise, the bid may be rejected and:
 1. new bids or offers may be solicited;

2. the proposed procurement may be canceled; or
 3. if the purchasing agent determines in writing that the need for the supply of service continues but that the price of the one bid is not fair and reasonable and there is no time for re-solicitation or re-solicitation would likely be futile, the procurement may then be conducted under a Sole Source Procurement or an Emergency Procurement as appropriate.
- vii. Multiple or Alternate Bids or Proposals. Unless multiple or alternate bids or offers are specifically provided for, the solicitation shall state they will not be accepted. When prohibited, the multiple or alternate bids or offers shall be rejected although a clearly indicated base bid shall be considered for award as though it were the only bid or offer submitted by the bidder or offeror. The provisions of this subsection shall be set forth in the solicitation, and if multiple or alternate bids are allowed, it shall specify their treatment.
- j. Tie Bids.
- i. Definition. Tie bids are low responsive bids from responsible bidders that are identical in price.
 - ii. Award. Award shall not be made by drawing lots, except as set forth below, or by dividing business among identical bidders. In the discretion of the purchasing agent, award shall be made in any permissible manner that will discourage tie bids. Procedures which may be used to discourage tie bids include:
 1. where identical low bids include the cost of delivery, award the contract to the bidder farthest from the point of delivery;
 2. award the contract to the identical bidder who received the previous award and continue to award succeeding contracts to the same bidder so long as all low bids are identical;
 3. award to the identical bidder with the earliest delivery date;
 4. award to a Utah resident bidder or for a Utah produced Product where other tie bid(s) are from out of state; or
 5. if price is considered excessive or for other reason such bids are unsatisfactory, reject all bids and negotiate a more favorable contract in the open market.
 6. if no permissible method will be effective in discouraging tie bids and a written determination is made so stating, award may be made by drawing lots.
 - iii. Record. Records shall be made of all Invitations for Bids on which tie bids are received showing at least the following information:
 1. the Invitation for Bids;
 2. the supply, service, or construction item;
 3. all the bidders and the prices submitted; and
 4. procedure for resolving tie bids.
- k. Multi-Step Sealed Bidding.

- i. Definition. Multi-step sealed bidding is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the purchasing agency, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered. It is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtain the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to arrive at technical offers and terms acceptable to the purchasing agency and suitable for competitive pricing.
- ii. Use. The multi-step sealed bidding method will be used when the purchasing agent deems it to the advantage of the purchasing agency. Multi-step sealed bidding will thus be used when it is considered desirable.
 1. to invite and evaluate technical offers to determine their acceptability to fulfill the purchase description requirements;
 2. to conduct discussions for the purposes of facilitating understanding of the technical offer and purchase description requirements and, where appropriate, obtain supplemental information, permit amendments of technical offers, or amend the purchase description;
 3. to accomplish Subsections (a) and (b) of this section prior to soliciting priced bids; and
 4. to award the contract to the lowest responsive and responsible bidder in accordance with the competitive sealed bidding procedures.
- iii. Pre-Bid Conferences in Multi-Step Sealed Bidding. Prior to the submission of unpriced technical offers, a pre-bid conference as contemplated by Pre-Bid Conferences may be conducted by the purchasing agent. The purchasing agent may also hold a conference of all bidders at any time during the evaluation of the unpriced technical offers.
- iv. Procedure for Phase One of Multi-Step Sealed Bidding.
 1. Form. Multi-step sealed bidding shall be initiated by the issuance of an Invitation for Bids in the form required by the Content of the Invitation for Bids, except as hereinafter provided. In addition to the requirements set forth in above, the multi-step Invitation for Bids shall state:
 - a. that unpriced technical offers are requested;
 - b. whether price bids are to be submitted at the same time as unpriced technical offers; if they are, such price bids shall be submitted in a separate sealed envelope;
 - c. that it is a multi-step sealed bid procurement, and priced bids will be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase;
 - d. the criteria to be used in the evaluation of the unpriced technical offers;

- e. that the purchasing agency, to the extent the purchasing agent finds necessary, may conduct oral or written discussions of the unpriced technical offers;
 - f. that bidders may designate those portions of the unpriced technical offers which contain trade secrets or other proprietary data which are to remain confidential; and
 - g. that the item being procured shall be furnished generally in accordance with the bidder's technical offer as found to be finally acceptable and shall meet the requirements of the Invitation for Bids.
2. Amendments to the Invitation for Bids. After receipt of unpriced technical offers, amendments to the Invitation for Bids shall be distributed only to bidders who submitted unpriced technical offers and they shall be allowed to submit new unpriced technical offers or to amend those submitted. If, in the opinion of the purchasing agent, a contemplated amendment will significantly change the nature of the procurement, the Invitation for Bids shall be canceled in accordance with the Cancellation of Solicitations of these regulations and a new Invitation for Bid issued.
 3. Receipt and Handling of Unpriced Technical Offers. Unpriced technical offers shall not be opened publicly nor be disclosed to unauthorized persons. Bidders may request nondisclosure of trade secrets and other proprietary data identified in writing.
 4. Evaluation of Unpriced Technical Offers. The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bids. The unpriced technical offers shall be categorized as:
 - a. Acceptable;
 - b. potentially acceptable, that is, reasonably susceptible of being made acceptable; or
 - c. unacceptable. The purchasing agent shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.
 - d. The purchasing agent may initiate phase two of the procedure if, in the purchasing agent's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without modification or alteration of the offers. If the purchasing agent finds that such is not the case, the purchasing agent shall issue an amendment to the Invitation for Bids or engage in technical discussions as set forth in Subsection (5) of this Section.
 5. Discussion of Unpriced Technical Offers. Discussion of its technical offer may be conducted by the purchasing agent with any bidder who submits an acceptable or potentially acceptable technical offer. During the course of such discussions the purchasing agent shall not

disclose any information derived from one unpriced technical offer to any other bidder. Once discussions are begun, any bidder who has not been notified that its offer has been finally found unacceptable may submit supplemental information modifying or otherwise amending its technical offer at any time until the closing date established by the purchasing agent. Such submissions may be made at the request of the purchasing agent or upon the bidder's own initiative.

6. Notice of Unacceptable Unpriced Technical Offer. When the purchasing agent determines a bidder's unpriced technical offer to be unacceptable, such officer shall notify the bidder. Such bidders shall not be afforded an additional opportunity to supplement technical offers.
- v. Mistakes During Multi-Step Sealed Bidding.
 1. Mistakes may be corrected or bids may be withdrawn during phase one;
 2. before unpriced technical offers are considered;
 3. after any discussions have commenced under the procedure for Phase One of Multi-Step Sealed Bidding, Discussion of Unpriced Technical Offers; or
 4. when responding to any amendment of the Invitation for Bids. Otherwise mistakes may be corrected or withdrawal permitted in accordance with the Mistakes in Bids.
 - vi. Carrying Out Phase Two.
 1. Initiation. Upon the completion of phase one, the purchasing agent shall either:
 - a. open price bids submitted in phase one (if price bids were required to be submitted) from bidders whose unpriced technical offers were found to be acceptable; provided, however, that the offers have remained unchanged, and the Invitation for Bids has not been amended; or
 - b. invite each acceptable bidder to submit a price bid.
 2. Conduct. Phase two is to be conducted as any other competitive sealed bid procurement except:
 - a. as specifically set forth in Section 3-114 through Section 3-120 of these regulations; and
 - b. no public notice need be given of this invitation to submit
 - l. Purchase of Items Separately from Construction Contract.
 - i. The purchasing agent is authorized to determine whether a supply item or group of supply items shall be included as a part of, or procured separately from, any contract for construction.
 - m. Exceptions to Competitive Sealed Bid Process.
 - i. The purchasing agent, head of a purchasing agency or designee may utilize alternative procurement methods (ie. Auctions, repossession sales, negotiation based upon industry indexes) to purchase items such as the

- following when determined to be more practicable or advantageous to the County.
- ii. Documentation of the alternative procurement method utilized shall be part of the contract file.
- n. Proposal Preparation Time.
 - i. 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.
 - o. Form of Proposal.
 - i. 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.
 - p. Public Notice.
 - i. Public notice shall be given by distributing the Request for Proposals in the same manner provided for distributing an Invitation for Bids under Public Notice.
 - q. Pre-Proposal Conferences.
 - i. Pre-proposal conferences may be conducted in accordance with Pre-Bid Conferences. Any such conference should be held prior to submission of initial proposals.
 - r. Evaluation of Proposals.
 - i. The Request for Proposals shall state all of the evaluation factors and their relative importance, including price.
 - ii. 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.
 - iii. The Purchasing Agent shall establish a selection 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 selection committee members will impartially review the submitted proposals to insure a well-founded, fair award recommendation and the possibility of a successful contract. No selection 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 selection committee, provided that such expert, consultant, or individual shall not be a member of the selection committee and shall not participate in the evaluation scoring.
 - iv. Once selection committee members are appointed to the selection 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.
- v. All proposals received shall be evaluated and scored independently by each member of the selection 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.
 - vi. 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.
 - vii. 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.
- s. Oral Presentations.
- i. Oral presentations should be scheduled if clarifications or additional information is necessary. The selection 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.
 - 1. All members or their representative of the selection committee should be present during the presentations at the committee meetings. Interview meetings are to be directed by the committee chair.
 - 2. All offerors must be afforded equal opportunity to respond in an oral interview. Time limits for oral presentations will be equal in length.
 - 3. No offeror will be given information pertaining to another offeror's proposal, or their present standing in the evaluation process, during the presentation.
 - 4. 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.
- t. Award.
- i. Award of Contract. After taking into consideration the selection committee's recommendations, tabulations, and rankings, the Board of County Commissioners shall award the contract to the top ranked offerors, or may elect to reject all proposals.
 - ii. In making its decision, the selection committee will make a recommendation to the Board of County Commissioners who will issue a "notice to award" in which offeror's proposal is in the best interest of the County, after considering all applicable factors.
 - iii. Award Documentation. A written determination in the form of a notice to award 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.
- iv. 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.
 - v. Publicizing Awards.
 - 1. After a notice to award is issued, a contract is entered into which shall be available in the Clerk/Auditor's office.
 - u. Exceptions to Competitive Sealed Proposal Process.
 - i. 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 the 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.
 - ii. Further Negotiations. Notwithstanding the provisions of above, 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.
 - iii. Documentation of the alternative procurement method selected shall state the reasons for selection and shall be made a part of the contract file
 - v. Emergency Exemption.
 - i. Exemptions from competitive bid requirements may include the following: Sole source providers, service contracts with professionals or specialists, emergency purchases. The Purchasing Agent shall sufficiently document the reason for not competitively bidding the procurement and have it approved by the San Juan County Board of Commissioners.
 - w. Protests.
 - i. Protests to the bidding process shall be submitted to the Chief Administrative Officer in writing within 5 business days. The Chief Administrative Officer will respond to the protest within 5 business days of receiving the complaint. The Chief Administrative Officer's decision may be appealed to the San Juan County Board of Commissioners in writing within 5 business days. The San Juan County Board of Commissioners may address the appeal at its next regularly scheduled meeting or hold a special meeting to evaluate the merits of the protest appeal.

Exhibit "A" Quote Sheet

Exhibit "B" Purchase Order