

R907. Transportation, Administration.

R907-33. Department of Transportation Procurement Rules.

R907-33-1. Authority and Purpose.

(1) This administrative rule, R907-33, is authorized by Utah Code Subsections 63G-6a-106(3)(a), and 72-1-201(h).

(2) The purpose of this rule is to establish procedures for purchasing equipment, services, and supplies necessary to perform and exercise the department's functions, powers, duties, rights, and responsibilities mandated by Utah Code Section 72-1-201.

R907-33-2. Definitions.

Terms used in this rule, R907-33, are as defined in Utah Code Section 63G-6a-103 unless stated otherwise by a section or subsection of this rule, R907-33.

R907-33-3. Application of Rule.

This rule, R907-33 applies to all vendors that are bound by contracts with the Department, vendors competing for contracts with the Department, and to all Department divisions and work groups administering contracts.

R907-33-4. Use of Similar Laws and Rules to Establish Precedent or Extrapolate Legal Intent - Title R33 Division of Purchasing and General Services.

(1) When the Department or its legal counsel determines a specific law or rule governing an issue does not exist, the executive director or designee, or the Department's legal counsel may refer to other laws similar in nature to the issue to establish a precedent or extrapolation of legal intent to assist in making a determination based on the reasonable person standard.

(2) For matters not addressed by this rule, R907-33 or rule R907-66, the applicable section or subsection of Title R33 Division of Purchasing and General Services shall apply.

R907-33-5. Competitive Procurement Required for Expenditure of Public Funds, Use of Public Property or Other Public Assets to Acquire Products and Services Unless Exception is Authorized, Need for Flexibility.

(1) Employees and agents conducting or administering the Department's procurement processes must maximize competition for contracts as much as practicable.

(2) Unless the executive director or a designee issues a written exception in accordance with provisions set forth in the Utah Procurement Code and applicable administrative rules documenting why a competitive procurement process is not required and why it is in the best interest of the Department to award a

contract without engaging in a standard procurement process, the department must conduct a standard procurement process whenever:

(a) Public funds are expended or used to acquire a procurement item; or

(b) the Department's property, name, influence, assets, resources, programs, or other things of value are used as consideration in the formation of a contract for a procurement item.

(3) The standard of care the Department must exercise when designing, constructing, and maintaining a state highway in a reasonably safe condition for travel requires that its procurement practices are flexible enough to allow it to consider all characteristics, terms, and conditions relevant to satisfying its needs when procuring required products and services.

R907-33-6. Multiple Award Contracts.

(1) Multiple Award Contracts. Awarding a contract for an indefinite quantity of a product or service to more than one seller. Contracts may be entered on a multiple award basis when the manager of procurement services determines that one or more of the following criteria is applicable:

(a) It is administratively or economically impractical to develop or modify specifications for a myriad of related supplies because of rapid technological changes.

(b) The subjective nature in the use of certain supplies and the fact that recognizing this need creates a more efficient use of the item.

(c) It is administratively or economically impractical to develop or modify specifications because of the heterogeneous nature or dissimilar attributes of the product lines.

(d) There is a need for compatibility with existing systems.

(e) The department should select the contractor to furnish the supply, service or construction based upon best value or return on investment.

(f) The product or service being procured serves a purpose of preventing or forestalling a threat to public health, welfare or safety.

(2) The Department may use invitations for bids or requests for proposals to solicit for multiple award contracts.

(3) If the Department anticipates entering into a multiple award contract before issuing the invitation for bids or request for proposals, it will:

(a) State in the solicitation that the Department may enter into multiple award contracts at the end of the procurement process, and

(b) describe the methodology the Department will use to

determine the number of contract awards.

R907-33-7. Exceptions to Competition-Based Procurement.

(1) (a) Small Purchases. The Department will conduct small purchases as required by Utah Code Section 63G-6a-506, and rules R33-5-104, R33-5-106, R33-5-106.5, and R33-5-107.

(b) The small purchase threshold for individual procurements will be \$5,000 rather than the threshold for individual procurements included in rule R33-5-104(3)(a).

(c) The Department will conduct small purchases of professional service providers and consultants as required by rule R907-66.

(2) Sole Source Procurement. A contract may be awarded for a supply, service or construction item without competition if the contracting officer first determines in writing that one of the following conditions exists:

(a) Only a single contractor is capable of providing the supply, service or construction.

(b) A Federal or State statute or Federal regulation exempts the supply, service or construction from the competitive procedure.

(c) The total cost of the supply, service or construction is less than the amount established by the department for small, no-bid procurements pursuant to R33-5 relating to small procurements.

(d) The manager of procurement services determines in writing it is clearly not feasible to award the contract for supplies or services on a competitive basis.

(e) The services are to be provided by attorneys, legal services providers, or litigation consultants selected by the Attorney General's Office.

(f) The services are to be provided by expert witnesses.

(g) The services involve the repair, modification, or calibration of equipment and they are to be performed by the manufacturer of the equipment or by the manufacturer's authorized dealer provided the manager of procurement services determines in writing that bidding is not appropriate under the circumstances.

(h) The executive director or designee determines in writing the contract for supplies or services are to protect public health, welfare, or safety, or to protect the safety or security of a transportation system.

(3) (a) Pursuant to authority granted by Utah Code Subsection 63G-6a-802(3)(b)(ii), the Department is not required to publish a notice of any kind prior to making a sole source procurement.

(b) The manager of procurement services may require publication of a notice of the Department's intent to make a sole

source procurement if the manager determines publishing such a notice is necessary to maintain the fair and equitable treatment of persons who deal with the Department's procurement system.

(4) Written determination and large sole source procurements. The written determination authorizing sole source procurement must be included in the contract file. For procurements over \$250,000 made under subsection R907-33-7(2)(i), the determination shall be approved by the attorney general's office.

(5) Regularly scheduled audits. The executive director or a designee may require regular audits of procurements made pursuant to any subsection of this rule R907-33-7.

(6) Emergency procurement. The executive director or a designee will make or authorize others to make an emergency procurement when there exists a threat to public health, welfare or safety, or circumstances outside the control of the Department create an urgency of need that does not permit the delay involved in using formal competitive procurement methods.

(a) A written authorization to make an emergency procurement will be required.

(b) The provider of the supply, service, or construction procured pursuant to this subsection, R907-33-7(6) may be paid based on the written authorization required by subsection R907-33-7(6)(a).

(c) Procurements made according to the requirements of this section R907-33-7(6) may not to be affected by divergent terms included in other contracts.

KEY: procurement, contractors, purchasing, vendors

Date of Enactment or Last Substantive Amendment: November 7, 2019

Authorizing, and Implemented or Interpreted Law: 63G-6a-106(3)(a); 72-1-201(h)