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

**AN ORDINANCE OF WEBER COUNTY AMENDING CERTAIN**

**PROVISIONS OF THE PURCHASING CODE**

**WHEREAS**,in 2021 the County replaced its purchasing ordinance with a new ordinance that was patterned after the Utah Procurement Code; and

**WHEREAS,** since that time, County employees have identified several provisions that need to be updated for the purpose of improving clarity of the ordinance; and

**WHEREAS,** in addition to making amendments to improve the clarity of the ordinance, the County Commission desires to amend Section 3-6-3(a)(3) of the purchasing code to authorize the Culture, Parks, and Recreation department authority to approve standard form agreements for theater production events;

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

## 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”
   1. means an irregularity or abnormality that is:
      1. a matter of form that does not affect substance; or
      2. 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
   2. includes:
      1. a missing signature, missing acknowledgment of an addendum, or missing copy of a professional license, bond, or insurance certificate;
      2. a typographical error;
      3. an error resulting from an inaccuracy or omission in the solicitation; and
      4. 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:
    1. satisfactorily fulfilling all the requirements of the solicitation; and
    2. fully performing all the requirements of the contract resulting from the solicitation.
    3. In determining responsibility, the purchasing agent may take into consideration:
       1. the bidder’s financial responsibility;
       2. past transactions with the bidder;
       3. the experience of the bidder or the bidder’s employees, agents, or subcontractors;
       4. the adequacy of the bidder’s equipment;
       5. the bidder’s ability to complete performance within a specified time limit; and
       6. 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.

1. “Responsive” means conforming in all material respects to the requirements of a solicitation. Quotes, bids, or proposals that are not responsive include those that:
   1. are conditional;
   2. attempt to modify the solicitation requirements;
   3. contain additional terms or conditions; or
   4. otherwise fail to conform with the requirements or specifications of the solicitation.
2. “Solicitation” means a solicitation of quotes, an invitation for bids, a request for proposals, or a request for statement of qualifications.
3. “Solicitation of quotes” means the process of soliciting 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.
4. “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.
5. “Subcontractor”
   1. 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
   2. 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:
   1. develop procurement policies and procedures supporting ethical procurement practices, fair and open competition among bidders, and transparency within the procurement process;
   2. ensure the county’s compliance with any applicable law, rule, or policy applicable to procurement;
   3. manage the county’s electronic procurement system;
   4. manage and supervise each procurement to ensure to the extent practicable that taxpayers receive the best value;
   5. correct, amend, or cancel a procurement at any stage of the procurement process if the procurement is out of compliance with this title;
   6. keep an accurate and complete record of all procurements and a detailed disposition of the same;
   7. oversee the training of county employees regarding the procurement process;
   8. provide exemplary customer service;
   9. seek to continually improve the county’s procurement operations;
   10. 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;
   11. coordinate the disposition of surplus personal property in accordance with Title 2, Chapter 21 of this County Code; and
   12. exercise all other authority, fulfill all other duties and responsibilities, and perform all other functions authorized under this title.
3. The purchasing agent may:
   1. delegate limited purchasing authority to county employees, with appropriate oversight and control to ensure compliance with this title and with state law;
   2. delegate duties and authority to an employee of the purchasing department, as the purchasing agent considers appropriate in compliance with state law;
   3. negotiate and settle contract overcharges, undercharges, and claims, with final approval by the board of county commissioners;
   4. waive any minor informality or minor technicality in a quote, bid, or proposal which does not materially change the significant elements of the quote, bid, or proposal and accept those quotes, bids, and proposals deemed to be in the best interest of the county.
   5. cancel any solicitation when deemed in the best interest of the county;
   6. remove an individual from the procurement process for:
      1. having a conflict of interest or the appearance of a conflict of interest with a bidder;
      2. having a bias or the appearance of bias for or against a bidder;
      3. making an inconsistent or unexplainable score for a proposal;
      4. having inappropriate contact or communication with a bidder;
      5. socializing inappropriately with a bidder;
      6. engaging in any other action or having any other association that causes the purchasing agent to conclude that the individual cannot fairly evaluate a proposal; or
      7. any other violation of a law, rule, or policy.

## 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 $100,000:
   1. The acquiring entity shall make the purchase following a solicitation of quotes, invitation for bids, or request for proposals.
   2. If the acquiring entity chooses to follow the solicitation of quotes process, the acquiring entity shall evaluate each quote in the best interest of the county and may use the evaluation criteria described in Section 3-2-7.
   3. The purchasing agent may determine, in the best interest of the county, which type of procurement under Subsection (d)(1) shall be used.
5. For procurements of $100,001 or more:
   1. The acquiring entity shall make the procurements following an invitation for bids or a request for proposals.
   2. The purchasing agent may determine, in the best interest of the county, which type of procurement under Subsection (e)(1) shall be used.
6. 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.

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

1. The purchasing agent may require 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.

## Sec. 3-2-9. – Tie bids.

1. As used in this section, “tie bid” means the lowest responsive bids of responsible bidders are identical in price.
2. The purchasing agent shall resolve a tie bid by:
   1. awarding the tie to the bidder who:
      1. is closest to the point of delivery;
      2. received the previous award; or
      3. will provide the earliest delivery date;
   2. requesting best and final offers under Section 3-4-3; or
   3. 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. 3-4-2. – 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 quotes, bids, or proposals may be sought.
3. The request for qualifications shall state that:
   1. the procurement process will consist of multiple stages;
   2. the request for qualifications stage is the first stage and is for prequalification only;
   3. a bidder may not submit any pricing information in the first stage; and
   4. 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:
   1. is responsible; and
   2. 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 (1) award a contract, (2) solicit costs, pricing, or rates, or (3) 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 (c), the acquiring entity may request best and final offers from responsible bidders:
   1. only with the approval of the purchasing agent; and
   2. if:
      1. no single quote, bid, or proposal adequately addresses all the specifications stated in the solicitation;
      2. all quotes, bids, or proposals are unclear or deficient in one or more respects;
      3. all proposed quotes, bids, or proposals exceed the acquiring entity’s available funding; or
      4. two or more proposals 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 quote, bid, or proposal.
4. The best and final offer process may not be used to change:
   1. a determination that a bidder is not responsible to a determination that the bidder is responsible; or
   2. a determination that a quote, bid, or proposal is not responsive to a determination that the quote, bid, or proposal is responsive.
5. This Subsection (e) applies if a request for best and final offers is issued because all quotes, bids, or proposals exceed the acquiring entity’s available funding.
   1. The acquiring entity may, in the request for best and final offers:
      1. specify the scope of work reductions the acquiring entity is making in order to generate quotes, bids, or proposals that are within the available funding; or
      2. 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.
   2. 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.
   3. A reduction in the scope of work may not:
      1. eliminate a component identified in the solicitation as a minimum mandatory requirement; or
      2. 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 proposals received an identical evaluation score that is the highest score:
   1. the request may be issued only to bidders who submitted a proposal receiving the highest score; and
   2. 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:
   1. clearly specify:
      1. the issues that the acquiring entity requests the bidders to address in their best and final offers; and
      2. how the best and final offers will be evaluated; and
   2. establish a deadline for a bidder to submit a best and final offer.
8. In a best and final offer, a bidder:
   1. may address only the issues described in the request for best and final offers; and
   2. may not correct a material error or deficiency in the bidder’s quote, bid, or proposal unless the conditions of Subsections (b)(2)(a) or (b)(2)(b) 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. 3-4-5. – Emergency procurement.

1. The county may obtain goods and services without engaging in a procurement process if:
   1. the purchasing agent determines that the procurement is necessary to:
      1. avoid a lapse in a critical government service;
      2. 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 Board of County Commissioners, the governor, or the President of the United States;
      3. protect the legal interests of the county; or
      4. 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. 3-5-2. – Contents of a protest.

1. A protestor shall include in a protest:
   1. the protestor's name, mailing address, email address, and phone number; and
   2. 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:
   1. a violation of this title or other applicable law or rule;
   2. the county’s failure to follow a provision of a solicitation;
   3. an error made by an evaluation committee;
   4. 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 quote, bid, or proposal meets the criteria in the solicitation;
   5. a failure to correctly apply or calculate a scoring criterion; or
   6. that specifications in a solicitation are unduly restrictive or unduly anticompetitive.
3. A protest may not be based on:
   1. the rejection of a quote, bid, or proposal 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 quote, bid, or proposal;
   2. a vague or unsubstantiated allegation; or
   3. 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:
   1. an explanation of the rationale or scoring of evaluation committee members; or
   2. the disclosure of a protected record or protected information.

## 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:
   1. Community Development may approve contracts to establish financial guarantees that are required under the Weber County Land Use Code for the completion of improvements.
   2. 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.
   3. Culture, Parks, and Recreations 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 and standard theater production agreements for actors, production team members, and consultants.
   4. The County Surveyor’s Office may approve public right-of-way deferral contracts, monument encroachment permits, assumption of risk and indemnification contracts, and monument improvement agreements.
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

# CHAPTER 7. – Unlawful conduct.

## Sec. 3-7-1. – Collusion among bidders.

1. Any collusion among bidders to limit competition shall render all quotes, bids, or proposals of such bidders void. If the collusion is not discovered until after the bidder is awarded a purchase order or contract, the purchase order or contract shall be void.
2. Any bidder participating in collusion is guilty of a class B misdemeanor.

## Sec. 3-7-2. – Division of procurements.

1. Procurements shall not be artificially divided to lower the cost of the procurement, thereby avoiding the procurement processes as set forth herein.

## Sec. 3-7-3. – Disclosure of aquote, bid, or proposal.

1. The county may not:
   1. open bids or proposals until after the deadline for submitting bids or proposals;
   2. disclose the contents of a bid or proposal to the public or to another bidder until after a purchase order or contract has been awarded and signed by all parties;
   3. disclose the contents of a bid or proposal to the public or to another bidder if the bid or proposal has been designated as a protected record based on Utah Code 63G-2-305.

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

PASSED, ADOPTED AND A SYNOPSIS ORDERED PUBLISHED this \_\_\_\_\_ day of August 2024.

BOARD OF COUNTY COMMISSIONERS

OF WEBER COUNTY

By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_James H. “Jim” Harvey, Chair

Commissioner Harvey voted \_\_\_\_\_\_

Commissioner Froerer voted \_\_\_\_\_\_

Commissioner Bolos voted \_\_\_\_\_\_

ATTEST:

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Ricky Hatch, CPA

Weber County Clerk/Auditor