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3-803 Bidding and Source Selection Procedures

A. Definitions

In ABOR Policies 3-803 (Bidding and Source Selection Procedures and 3-804 (Professional Services and Construction Services Procurement:

1. "Bidder prequalification" means determining, in accordance with procedures adopted by a procurement officer consistent with this Code, that a prospective bidder or offeror satisfies the criteria established for being included on a university bidder's list.
2. "Bid sample" means a sample to be furnished by bidder to show the characteristics of the item offered in the bid.
3. "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are reasonable, allowable and allocable in accordance with the contract terms and the provisions of this Code, and a fee, if provided in the contract.
4. "Discussions" as used in source selection means negotiation during which the seller or buyer may alter or otherwise change the terms, price or other provisions of the proposed contract. Discussions can be conducted under competitive sealed proposals procurements, request for qualifications procurements, sole source procurements and emergency procurements; such discussions are not permissible under competitive sealed bidding except to the extent allowed in the first phase of multi-step bidding.
5. "Established catalog price" means the price included in a catalog, price list, schedule or other form that:
 - a. Is regularly maintained by a manufacturer, distributor or contractor.
 - b. Is either published or otherwise available for inspection by customers.

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- c. States prices at which sales are currently or last made to a significant number of any category of buyers or buyers constituting the general buying public for the materials or services involved.
6. "Invitation for bids" means all documents, whether attached or incorporated by reference, which are used for soliciting bids in accordance with the procedures prescribed in ABOR Policy 3-803.B (Bidding and Source Selection Procedures, Competitive Sealed Bidding).
7. "Multi-step sealed bidding" means a two-phase process consisting of a technical first phase consisting of one or more steps in which bidders submit unpriced technical offers to be evaluated by the university, 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.
8. "Offer" means a proposal or submission of qualifications, as applicable, when a procurement is made by a source selection method other than competitive sealed bidding.
9. "Offeror" means a person submitting a proposal or statement of qualifications, as applicable, when a procurement is made by a source selection method other than competitive sealed bidding.
10. "Opening" means the date and time set for unsealing bids, receipt of unpriced technical offers in multi-step bidding, or receipt of proposals and competitive sealed proposals.
11. "Paper" means newspaper, high grade office paper, fine paper, bond paper, offset paper, xerographic paper, duplicator paper and related types of cellulosic materials containing not more than ten percent by weight or volume of non-cellulosic material such as laminates, binders, coatings or saturates.
12. "Paper Product" means paper items or commodities, including paper napkins, towels, corrugated paper and related types of cellulosic products containing not more than ten percent by weight

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or volume of noncellulosic materials such as laminates, binders, coatings or saturates.

13. "Post-Consumer Material" means a discard generated by a business or residence that has fulfilled its useful life. Post-consumer materials does not include discards from industrial or manufacturing processes.
14. "Purchase description" means the words used in a solicitation to describe the materials, services, construction or construction services for purchase and includes plans and specifications attached to, or made a part of, the solicitation.
15. "Recycled Paper" means paper products which have been manufactured from materials otherwise destined for the waste stream and which contain at least forty percent recovered wastepaper with ten percent of that being post-consumer material.
16. "Request for proposals" means all documents, whether attached or incorporated by reference, which are used in soliciting proposals in accordance with procedures prescribed in ABOR Policy 3-803 C (Bidding and Source Selection Procedures, Competitive Sealed Proposals) or ABOR Policy 3-804B.6 (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition).
17. "Request for Qualifications" means all documents, whether attached or incorporated by reference, which are used in soliciting statements of qualifications in accordance with procedures prescribed in ABOR Policy 3-803E (Bidding and Source Selection Procedures, Competitive Selection Process for Clergy, Certified Public Accountants, Financial Advisors and Consultants, Physicians, Dentists and Legal Counsel), ABOR Policy 3-804B.3.b (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services, Definition), or any other appropriate provision of the University Procurement Code.

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18. "Requirements contract" means a term contract covering estimated quantities of materials or services or indefinite quantities of job-order-contracting construction services, or maximum and/or minimum quantities and with delivery on demand.
19. "Solicitation" means an invitation for bids, a request for proposals, a request for quotations, a request for qualifications, or any other requests by a university for the purpose of soliciting bids or proposals or qualifications to perform a contract to be entered into by the Board.
20. "Technical offer" means solicited or unsolicited submission of written information from a prospective contractor that states how that party intends to perform certain work; its technical and business qualifications; and its proposed delivery, warranty, and other terms and conditions as those might differ from or supplement the university's solicitation requirements. It shall include such pricing information as may be required.
21. "Technical Proposal" means a technical proposal under ABOR Policy 3-804B.6 (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition).
22. "Wastepaper" means recyclable paper and paperboard, including high grade office paper, computer paper, fine paper, bond paper, offset paper, xerographic paper, duplicator paper and corrugated paper.

B. Competitive Sealed Bidding

1. Contracts shall be awarded by competitive sealed bidding except as provided by this code in accordance with the following sections:
 - a. 3-803C - Competitive Sealed Proposals
 - b. 3-803D.1 - Procurement not exceeding \$50,000
 - c. 3-803D.2 - Sole Source Procurement

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- d. 3-803D.3 - Emergency Procurement
- e. 3-803D.4. - Procurement of livestock, animals, feed, etc.
- f. 3-803D.5. - Procurement of materials at auction or at commodity index - excluding real property
- g. 3-803D.6. - Simplified construction procurement program
- h. 3-803E.1 - Competitive Selection Process for Clergy, Certified Public Accountants, Financial Advisors and Consultants, Physicians, Dentists and Legal Counsel
- i. 3-804B - Professional Services, Construction and Construction Services, Procurement of Professional Services and Construction Services
- j. 3-808G - ARCORS and Arizona Industries for the Blind

2. An invitation for bids shall be issued and shall include a purchase description and contractual terms and conditions applicable to the procurement.
3. Adequate public notice of the invitation for bids shall be given a reasonable time before the date set forth in the invitation for the opening of bids. The notice may include publication one (1) or more times in a newspaper of general circulation a reasonable time before bid opening. If the invitation for bids is for the procurement of services other than those described in ABOR Policy 3-803E (Bidding and Source Selection Procedures, Competitive Selection Process for Clergy, Certified Public Accountants, Financial Advisors and Consultants, Physicians, Dentists and Legal Counsel) below,

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the notice shall include publication in a newspaper of general circulation within this state. The publication shall be not less than two (2) weeks before bid opening. The notice may also be posted at a designated site on a worldwide public network of interconnected computers.

4. Bids shall be opened publicly, in the presence of one or more witnesses, at the time, date and place designated in the invitation for bids. The amount of each bid, and such other relevant information as may be specified by the procurement officer, together with the name of each bidder shall be recorded. This record shall be open to public inspection at the bid opening in a manner prescribed by the procurement officer. The bids shall not be open for public inspection until after a contract is awarded. To the extent the bidder designates and the university concurs, trade secrets or other proprietary data contained in the bid documents shall be maintained as confidential, all other information contained in such documents shall become public information following contract award.

The procurement officer 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 procurement officer shall inform the bidder in writing what portions of the bids will be disclosed and that unless the bidder protests under ABOR Policy 3-809 (Legal Remedies) of this Code the bids will be disclosed. After a contract is awarded, the bids shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

5. Bids shall be evaluated based on the requirements set forth in the invitation for bids. The university may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. The invitation for bids shall set forth the evaluation criteria, including the weighting of identified criteria. Evaluation criteria shall not be used for construction and no criteria may be used in bid evaluation that are not set forth in the invitation for bids.

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6. Correction or withdrawal of erroneous bids before or after bid opening, based on bid mistakes, may be permitted by the procurement officer in accordance with procedures promulgated by the procurement officer. After bid opening, no corrections in bid prices or other provisions of bids prejudicial to the interests of a university or fair competition shall be permitted. Except as otherwise provided by this Code, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the procurement officer. Mistakes shall not be corrected after the award of the contract.

7. The contract shall be awarded to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set forth in the invitation for bids. The amount of any applicable transaction privilege or use tax of a political subdivision of this state is not a factor in determining the lowest bidder. If all bids for a construction project exceed available monies as certified by the appropriate fiscal officer, and the low responsive and responsible bid does not exceed such monies by more than five percent (5%), the procurement officer may in situations in which time or economic considerations preclude resolicitation of work of a reduced scope negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder, to bring the bid within the amount of available monies.

8. The multi-step sealed bidding method may be used if the procurement officer determines that it is not practical to initially prepare a definitive purchase description which is suitable to permit an award based on competitive sealed bidding. An invitation for bids may be issued requesting the submission of technical offers to be followed by an invitation for bids limited to those bidders whose offers are determined to be technically acceptable under the criteria set forth in the first solicitation, except that the multistep sealed bidding method may not be used for construction contracts.

9. If the price of a recycled paper product which conforms to specifications is within five percent(5%) of a low bid product which

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is not recycled and the recycled product bidder is otherwise the lowest responsible and responsive bidder, the award shall be made to the bidder offering the recycled product. The university may adopt rules requiring a five percent (5%) preference for other products made from recycled materials.

C. Competitive Sealed Proposals

1. If the procurement officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the university, a contract for materials or services may be entered into by competitive sealed proposals. This subsection does not apply to procurement of construction or construction services or specific professional services pursuant to ABOR Policy 3-804.B.3.a (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services; Definition). Construction, construction services and design services shall be procured as prescribed in ABOR Policy 3-804A (Professional Services and Construction Services Procurement, Project Delivery Methods for Design Services and Construction Services; Report)
 - a. Factors to be considered in determining whether competitive sealed bidding is not practicable include:
 - (1) Whether the contract needs to be other than a fixed price type;
 - (2) Whether oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposals;
 - (3) Whether offerors may need to be afforded the opportunity to revise their proposals, including price;
 - (4) Whether an award may need to be based upon a comparative evaluation as stated in the request for proposals of differing price, quality, and contractual factors in order to determine the most advantageous

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offering to the university. Quality factors include technical and performance capability and the content of the technical proposal; and

- (5) Whether the primary consideration in determining award may not be price.
- b. Factors to be considered in determining whether competitive sealed bidding is not advantageous include:
- (1) If prior procurements indicate that competitive sealed proposals may result in more beneficial contracts for the university; and
 - (2) Whether the factors listed in ABOR Policy 3-803C.1.a.(2) through (4) (Bidding and Source Selection Procedures, Competitive Sealed Proposals) are desirable in conducting a procurement rather than necessary.
2. Proposals shall be solicited through a request for proposals.
 3. Adequate public notice of the request for proposals shall be given in the same manner as provided in ABOR Policy 3-803B.3 (Bidding and Source Selection Procedures, Competitive Sealed Bidding).
 4. Proposals shall be opened publicly at the time, date and place designated in the request for proposals. The name of each offeror, and such other relevant information as is specified by the procurement officer, shall be publicly read and recorded. All other information contained in the proposals shall be confidential so as to avoid disclosure of contents prejudicial to competing offerors during the process of negotiation. The proposals shall be open for public inspection after contract award. To the extent that the offeror designates and the university concurs, trade secrets or other proprietary data contained in the offer documents shall be maintained as confidential, all other information contained in such documents shall become public information following contract award.

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The procurement officer shall examine the offers 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 procurement officer shall inform the offeror in writing what portions of the offer will be disclosed and that unless the offeror protests under ABOR Policy 3-809 (Legal Remedies) the offer will be disclosed. After a contract is awarded, the offers shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

5. The request for proposals shall state all of the evaluation factors, including price, and their relative importance. Specific numerical weighting is not required, but may be used.

6. As provided in the request for proposals, and under procedures promulgated by the procurement officer, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible to being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and before award for the purpose of obtaining best and final offers. If discussions are conducted, all offerors who have submitted proposals that are determined by the procurement officer to be in the competitive range shall be invited to submit a final revised proposal. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors. The award shall be made to the responsive and responsible offeror whose proposal is determined to be the most advantageous to a university taking into consideration the evaluation factors set forth in the request for proposals. No other factors or criteria may be used in the evaluation. The amount of any applicable transaction privilege or use tax of a political subdivision of this state is not a factor in determining the most advantageous proposal. The contract file shall contain a written determination showing the basis on which the award is made.

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7. Notwithstanding any other provision in this Article H (University Procurement Code), a contract for the services of any financial consultant under circumstances not covered in ABOR Policy 3-803.D (Bidding and Source Selection Procedures , Exceptions to Competitive Selection) shall be awarded through competitive sealed proposals.
 - a. Prospective financial consultants may be prequalified pursuant to ABOR Policy 3-803.F.3 (Bidding and Source Selection Procedures, Additional Provisions Related to Source Selection). The universities may use a uniform questionnaire for this purpose.
 - b. For any such contract, a university may use another method of procurement consistent with this Code upon prior approval of the Board.

D. Exceptions to Competitive Selection

1. Procurement Not Exceeding \$50,000

Any procurement which does not exceed an aggregate dollar amount of fifty thousand dollars may be made in accordance with procedures promulgated by the procurement officer, except that the procurements shall be made with such competition as is practicable under the circumstances. Any procurement which does not exceed the aggregate dollar amount of fifty thousand dollars shall be restricted, if practicable, to small businesses. The procurement officer shall rotate the small businesses solicited to compete for any procurement of fifty thousand dollars or less. If it is impracticable to restrict a particular procurement to small businesses, the procurement officer shall make a determination setting forth the reasons and place it in the contract file. Procurement requirements shall not be artificially divided or fragmented so as to constitute a purchase under this subsection and to circumvent the source selection procedures required by ABOR Policy 3-803.B (Bidding and Source Selection Procedures, Competitive Sealed Bidding) or ABOR Policy 3-803.C (Bidding and Source Selection Procedures,

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Competitive Sealed Proposals) or ABOR Policy 3-804.B (Professional Services and Construction Services Procurement, Procurement of Professional Services and Construction Services, Definition).

2. Sole Source Procurement

A contract may be awarded for a material, service or construction item without competition if the procurement officer determines in writing that there is only one source for the required material, service or construction item. The procurement officer may require the submission of cost or pricing data in connection with an award under ABOR Policy 3-803D.2 (Bidding and Source Selection Procedures, Exceptions to Competitive Selection, Sole Source Procurement). Sole source procurement shall be avoided except when no reasonable alternative source exists. A written determination of the basis for the sole source procurement shall be included in the contract file.

3. Emergency Procurements

Notwithstanding any other provisions of the Code, a university president or the president's designee may make emergency procurements if there exists a threat to public health, welfare or safety, or if a situation exists which makes compliance with ABOR Policy 3-803B (Bidding and Source Selection Procedures, Competitive Sealed Bidding), ABOR Policy 3-803C (Bidding and Source Selection Procedures, Competitive Sealed Proposals) or ABOR Policy 3-804B (Professional Services, and Construction Services Procurement, Procurement of Professional Services and Construction Services) impracticable, unnecessary or contrary to the public interest, except that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

4. Procurement of Livestock, Animals, Feed, etc.

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The procurement officer shall be authorized to purchase livestock, animals, and feed through "order buyers" who may attend auctions in order to purchase cattle that meet agreed upon size and other specifications and based upon the current market value of the cattle at the time of purchase.

5. Procurement of material at auction or at commodity index - excluding real property

The procurement officer shall be authorized to purchase material where the price of the material is established by auction or by a recognized, published commodity index, and where it is determined that competitive bidding is not practicable. Notwithstanding this provision, real property must be purchased in accordance with the requirements of ABOR Policy 7-203 (Purchases of Real Property).

6. Simplified Construction Procurement Program (A.R.S. §41-2535)

A procurement involving construction not exceeding one hundred thousand dollars (\$100,000) may be made pursuant to rules adopted by the procurement officer in accordance with this section which shall be known as the simplified construction procurement program. These rules shall require that:

- a. A list be maintained of firms/persons who desire to receive solicitations to bid on construction projects; additions shall be permitted throughout the year.
- b. The list of firms/persons be available for public inspection.
- c. Agreements for construction be on forms approved by the procurement officer.
- d. A performance bond and a payment bond be posted as required by ABOR Policy 3-804D (Professional Services Construction and Construction Services, Contract Performance and Payment Bonds).

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- e. All information submitted by bidders pursuant to this section be confidential according to ABOR Policy 3-803B.4 (Bidding and Source Selection Procedures, Competitive Sealed Bidding).
- f. All bids for construction be opened at a public opening.
- g. All persons desiring to submit bids be treated equitably and the information related to each project be available to all eligible persons.
- h. Competition for construction projects under the simplified construction procurement program be encouraged to the maximum extent possible.

7. Record of Procurement Actions

Each university procurement officer shall maintain a record listing all sole source and emergency procurements in excess of \$50,000 for a minimum of five (5) years. The records shall be available for public inspection and shall contain:

- a. Each contractor's name.
- b. The amount and type of each contract.
- c. A listing of the materials, services, construction or construction services procured for each contract.

E. Competitive Selection Process for Clergy, Certified Public Accountants, Financial Advisors and Consultants, Physicians, Dentists and Legal Counsel

- 1. The services of clergy, Certified Public Accounts, financial advisors and consultants, physicians, dentists and legal counsel shall be procured in accordance with ABOR Policy 3-803E (Bidding and Source Selection Procedures, Competitive Selection Process for Clergy, Certified Public Accountants, Financial Advisors and Consultants, Physicians, Dentists and Legal Counsel), except as

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authorized under ABOR Policy 3-803D (Bidding and Source Selection Procedures, Exceptions to Competitive Selection).

2. Persons engaged in providing the services specified in ABOR Policy 3-803E.1 (Bidding and Source Selection Procedures, Competitive Selection Process for Clergy, Certified Public Accountants, Financial Advisors and Consultants, Physicians, Dentists and Legal Counsel) above may submit statements of qualifications and expressions of interest in providing such types of services. The procurement officer may specify a uniform format for statements of qualifications. Persons may amend these statements at any time by filing a new statement.
3. Adequate notice of the need for such services shall be given by the procurement officer through a request for proposals. The request for proposals shall describe the services required and list the type of information and data required of each offeror.
4. The selection committee may conduct discussions with any offeror who submits a proposal to determine the offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.
5. The award shall be made to the offeror determined in writing by the selection committee to be best qualified based on the evaluation factors set forth in the request for proposals and after a written determination that the compensation is fair and reasonable. Selection may be made pursuant to the provisions of this ABOR Policy 3-803E (Bidding and Source Selection Procedures, Competitive Selection Process for Clergy, Certified Public Accountants, Financial Advisors and Consultants, Physicians, Dentists and Legal Counsel) without requiring priced proposals, but if price is included in proposals submitted, no contract may be awarded solely on the basis of price. Written notice of award shall be public information and made part of the contract file.
6. No contract for the services of legal counsel shall be awarded without the prior approval of the Board or Counsel to the Board.

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7. ABOR Policy 3-803E (Bidding and Source Selection Procedures, Competitive Selection Process for Clergy, Certified Public Accountants, Financial Advisors and Consultants, Physicians, Dentists and Legal Counsel) shall not preclude any university or the Board from employing professional personnel as employees of a university under the applicable conditions of service policies maintained by the Board.

F. Additional Provisions Related to Source Selection

1. An invitation for bids, a request for proposals, a request for qualifications, or other solicitation may be canceled or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation if it is in the best interest of the university. The reasons for the cancellation or rejection shall be made a part of the contract file.
2. Responsibility of Bidders and Offerors
 - a. A bidder or offeror shall be required to provide written certification of compliance with applicable Arizona licensing requirements with submission of a bid or proposal.
 - b. A written determination of nonresponsibility of a bidder or offeror shall be made in accordance with procedures promulgated by the procurement officer. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility shall be grounds for a determination of nonresponsibility with respect to the bidder or offeror. A finding of nonresponsibility shall not be construed as a violation of the rights of any person.
 - c. Except for the certification required in subparagraph a, information furnished by a bidder or offeror pursuant to this ABOR Policy 3-803F.2 (Bidding and Source Selection Procedures, Additional Provisions Related to Source Selection) may only be disclosed by the university procurement office, university legal counsel, the university

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president or the Board of Regents with prior written consent by the bidder or offeror except to law enforcement agencies.

3. Prospective contractors may be prequalified for particular types of materials, services and construction. Prospective contractors have a continuing duty to provide the university with information on any material change affecting the basis of their prequalification. Solicitation mailing lists of potential contractors shall include the prequalified prospective contractors. A prospective contractor may not be denied award of a contract simply because such prospective contractor was not prequalified. The fact that a prospective contractor has been prequalified does not necessarily represent the finding of responsibility.
4. Bid guaranty and performance bonds or other security to guarantee faithful bid and contract performance may be required for material or service contracts as the procurement officer deems advisable to protect the interests of the university. Any such requirements must be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of bidder responsibility.
5. Cost and Pricing Data
 - a. The submission of current cost or pricing data may be required in connection with an award in situations in which analysis of the proposed price is essential to determine that the price is reasonable and fair. A contractor shall, except as otherwise provided in ABOR Policy 3-803F.5.c. (Bidding and Source Selection Procedures, Additional Provisions Related to Source Selection, Cost and Price Data) below, submit current cost or pricing data and shall certify that, to the best of the contractor's knowledge and belief, the cost or pricing data submitted was accurate, complete and current as of a mutually determined specified date before the date of either:
 - (1) The pricing of any contract awarded by competitive sealed proposals or pursuant to the sole source

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procurement authority, if the total contract price is expected to exceed an amount established by university procedures; or

- (2) The pricing of any change order or contract modification which is expected to exceed an amount established by university procedures.
- b. Any contract, change order or contract modification under which a certificate is required shall contain a provision that the price to the university shall be adjusted to exclude any significant amounts by which the university finds that the price was increased because the contractor furnished cost or pricing data which was inaccurate, incomplete or not current as of the date agreed on between the parties. Such adjustment by the university may include profit or fee.
- c. The requirements of ABOR Policy 3-803F.5 (Bidding and Source Selection Procedures, Additional Provisions Related to Source Selection, Cost and Price Data). need not be applied to contracts if any of the following apply:
- (1) The contract price is based on adequate price competition.
 - (2) The contract price is based on established catalog prices or market prices.
 - (3) Contract prices are set by law or regulation.
 - (4) It is determined in writing in accordance with university procedures that the requirements of this section may be waived, and the reasons for the waiver are stated in writing.

6. Types of Contracts

Subject to the limitations of this paragraph, any type of contract which will promote the best interests of the university may be used,

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except that the use of a cost-plus-a-percentage-of- cost contract is prohibited. A cost-reimbursement contract may be used only if a determination is made in writing that such contract is likely to be less costly to the university than any other or that it is impracticable to obtain the materials, services, construction or construction services required except under such a contract.

7. Except with respect to firm-price contracts, no contract type may be used unless it is determined in writing by the procurement officer that the proposed contractor's accounting system is adequate to allocate costs.
8. Multi-Term Contracts
 - a. Unless otherwise provided by law, a contract for materials or services may be entered into for a period of time up to five (5) years and a contract for job-order-contracting construction services may be entered into for a period of time up to five (5) years, as deemed to be in the best interest of a university, if the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and monies are available for the first fiscal period at the time of contracting. A contract may be entered into for materials or services for a period of time exceeding five (5) years if the university president or a designee determines in writing that such a contract would be advantageous to a university. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of monies.
 - b. Before the use of a multi-term contract, it shall be determined in writing that:
 - (1) Estimated requirements cover the period of the contract and are reasonable and continuing.
 - (2) Such a contract will serve the best interests of the university by encouraging effective competition or

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otherwise promoting economies in university procurement.

- c. If monies are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled and the contractor may only be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the materials, services or job-order-contracting construction services delivered under the contract or which are otherwise not recoverable. The cost of cancellation may be paid from any appropriations available for such purpose.
9. A university may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by a university.
10. Right to Audit Records
- a. A university may, at reasonable times and places, audit the books and records of any person who submits cost or pricing data to the extent that the books and records relate to the cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required shall maintain the books and records that relate to the cost or pricing data for five (5) years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing by the procurement officer.
 - b. A university is entitled to audit the books and records of a contractor or any subcontractor under any contract or subcontract to the extent that the books and records relate to the performance of the contract or subcontract. The books and records shall be maintained by the contractor for a period of five (5) years from the date of final payment under the prime contract and by the subcontractor for a period of five (5) years from the date of final payment under the

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subcontract, unless a shorter period is otherwise authorized in writing by the procurement officer.

11. If for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the university legal counsel and to the Counsel for the Board of Regents, who shall inform the Attorney General.
12. All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the State Department of Library, Archives and Public Records.
13. A change order with respect to a contract for construction or construction services shall only be executed after applicable internal procedures set forth in Article A of Chapter VII (Buildings, Infrastructure and Land, Capital Planning and Development Process) have been complied with by the university.

G. Public-Private Technology Financing Partnership Contracts

1. A university may enter into public-private partnership contracts to finance the technology needs of the university. The funding for services under a public-private partnership contract entered into pursuant ABOR Policy 3-803 (Bidding and Source Selection Procedures) shall be contingent on and computed according to established performance standards and shall be attributable to the successful implementation of the technology program for the period specified in the contract. A university may issue requests for information and requests for proposals to solicit private partners that are interested in providing programs under a contract entered into pursuant to this section.
2. Each request for proposals issued pursuant to ABOR Policy 3-803 (Bidding and Source Selection Procedures) shall require each private partner to propose specific performance improvements and measurement approaches to be used to measure the value delivered by the vendor technology solution. The university shall

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include an assessment of the proposed value of the vendor technology solution in its evaluation criteria to select the best value solution for the university.

3. A contract entered into between a university and an automated systems vendor shall provide for payment of fees on a contractually specific amount based on the achievement of measured performance improvements that are mutually agreed to by the contractor and the university and monies for payment of these fees are not subject to legislative appropriation. The following are subject to review and approval by the president of the university:
 - a. The terms of contracts entered into pursuant to ABOR Policy 3-803 (Bidding and Source Selection Procedures) relating to the measurement of the performance improvement attributable to the vendor technology program.
 - b. Payment of fees based on the achievement of the established performance measures.

4. Before a public-private partnership contract is awarded pursuant to this Section, the Joint Legislative Budget Committee staff shall be consulted with regard to the potential fiscal impact of the contract to the state. If the Joint Legislative Budget Committee staff finds a significant negative fiscal impact to the state, the staff shall report its findings to the Joint Legislative Budget Committee.