



POLICIES AND PROCEDURES

Policy # 020

Subject: Specific Dollar Amount and/or a Not to Exceed Limit Required.

Effective: May 10, 2017

References: Utah Constitution and Utah Procurement Code

Purpose:

Two of the purposes of the Utah Procurement Code are to ensure the fair and equitable treatment of all persons who deal with the Utah Procurement and to provide increased economy in State of Utah procurement activities. Adding funds to an existing contract constitutes an expenditure of public funds without competition and is an exception to the standard procurement process, and must adhere to the purposes of the Utah Procurement Code.

Policy:

- A. All contracts for Executive Branch Agencies are required to have a total dollar amount and/or a not-to-exceed limit for the following reasons:
1. The Division of Finance requires every contract entered into FINET to have a total dollar amount.
 2. Protection against procurement fraud. Contracts without a specific dollar amount and/or a not to exceed limit are prime candidates for procurement fraud. Without a specific dollar amount and/or a not-to-exceed limit, the scope and funding of contracts can expand well beyond what was described in the initial solicitation. Dollar amounts and not-to-exceed limits are part of the checks, balances process that ensures fair and open competition and transparency in the public procurement process. Whenever additional funds exceeding more than 25% of the initial contract amount are added to an executive branch agency contract, Division of Purchasing Policy #019 requires the Chief Procurement Officer or head of a procurement unit with independent procurement authority to consult with legal counsel to ensure that adding the additional funds does not violate state or federal antitrust laws and is consistent with the purpose of ensuring the fair and equitable treatment of all persons who deal with the procurement system. Policy #019 was put in place to help protect against procurement fraud by adding

another set of eyes to the approval process when adding more than 25% in additional funds to a contract.

- B. This policy does not apply to contracts in which State of Utah's agencies do not incur debt at the time of contract formation. For example, State of Utah "Best Value" Cooperative Contracts and concession type contracts do not incur debt for the State of Utah at the time of contract formation.

As defined in the Utah Procurement Code, the following are acceptable contracts for Executive Branch Agencies:

"Cost-plus-a-percentage-of-cost contract" means a contract under which the contractor is paid a percentage of the total actual expenses or costs in addition to the contractor's actual expenses or costs.

"Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowed and allocated in accordance with the contract terms and the provisions of this chapter, and a fee, if any.

"Definite quantity contract" means a fixed price contract that provides for a specified amount of supplies over a specified period, with deliveries scheduled according to a specified schedule.

"Fixed price contract" means a contract that provides a price, for each procurement item obtained under the contract, that is not subject to adjustment except to the extent that:

- (a) the contract provides, under circumstances specified in the contract, for an adjustment in price that is not based on cost to the contractor; or
- (b) an adjustment is required by law.

"Fixed price contract with price adjustment" means a fixed price contract that provides for an upward or downward revision of price, precisely described in the contract, that:

- (a) is based on the consumer price index or another commercially acceptable index, source, or formula; and
- (b) is not based on a percentage of the cost to the contractor.

"Indefinite quantity contract" means a fixed price contract that:

- (a) is for an indefinite amount of procurement items to be supplied as ordered by a procurement unit; and
- (b)(i) does not require a minimum purchase amount; or
- (ii) provides a maximum purchase limit.

"Labor hour contract" is a contract under which:

- (a) the supplies and materials are not provided by, or through, the contractor; and
- (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and profit for a specified number of labor hours or days.

“Requirements contract” means a contract:

- (a) under which a contractor agrees to provide a procurement unit’s entire requirements for certain procurement items at prices specified in the contract during the contract period; and
- (b) that:
 - (i) does not require a minimum purchase amount; or
 - (ii) provides a maximum purchase limit.

“Time and materials contract” means a contract under which the contractor is paid:

- (a) the actual cost of direct labor at specified hourly rates;
- (b) the actual cost of materials and equipment usage; and
- (c) an additional amount, expressly described in the contract, to cover overhead and profit, that is not based on a percentage of the cost to the contractor.