

## **Procurement: General Procurement Policies**

### **Standard Procurement Processes—**

Except as described below regarding exceptions, procurements by the District must be conducted using a “standard procurement process.” The standard procurement processes are (1) bidding, as described in Policies CBB and CBC; (2) requests for proposals, as described in Policy CBD; (3) the approved vendor list, as described in Policy CBDB, (4) small purchases, as described in Policy CBE, and (5) the design professional process, as described in Policy CCF.

[Utah Code § 63G-6a-103\(86\) \(2021\)](#)

### **Supplemental Procurement Procedures—**

A supplemental procurement procedure can be used to assist with a standard procurement process. The supplemental procurement processes are (1) request for information, as described below, and (2) request for statement of qualifications, as described in Policy CBDA.

[Utah Code § 63G-6a-401 \(2016\)](#)

### **Best and Final Offers Only Permitted with Requests for Proposals—**

The best and final offer process may only be used with a request for proposals process. It may not be used with any other procurement process.

[Utah Code § 63G-6a-707.5\(1\) \(2020\)](#)

### **Exceptions to Standard Procurement Processes—**

The only other permissible procurement methods apart from the standard procurement processes are procurements under the following procedures as described in Policy CBF: Sole Source Procurement, Transitional Costs/Best Interest Procurement, Specified Circumstances Procurement, Extension of Contract, Trial Use Contract, Emergency Procurement, Prison Industry Goods Procurement, and Community Rehabilitation Program Procurement.

[Utah Code § 63G-6a-802 \(2021\)](#)

[Utah Code § 63G-6a-802.3 \(2020\)](#)

[Utah Code § 63G-6a-802.7 \(2020\)](#)

[Utah Code § 63G-6a-803 \(2021\)](#)

[Utah Code § 63G-6a-804 \(2020\)](#)

[Utah Code § 63G-6a-805 \(2016\)](#)

[Utah Admin. Rules R33-8-101 \(January 22, 2021\)](#)

### **Request for Information—**

A “request for information” is a nonbinding process where the District requests information relating to a procurement item. The purpose of a request for

information is to obtain information, comments, or suggestions before issuing a solicitation.

[Utah Code § 63G-6a-103\(69\) \(2021\)](#)

[Utah Code § 63G-6a-409\(1\) \(2020\)](#)

A request for information may seek a wide range of information, including for example information on availability of a procurement item, delivery schedules, industry standards and practices, product specifications, training, new technologies, capabilities of potential providers of a procurement item, and alternate solutions.

A request for information is not a procurement process and may not be used to negotiate fees, make a purchase, enter into a contract, or determine whether a procurement may be made under an exception to the standard procurement processes. Similarly, a response to a request for information is not an offer and may not be accepted to form a binding contract. Information submitted to the District by others or by the District to others in connection with a request for information is considered “protected” information under the Utah Government Records Access and Management Act and Policy GA. The request should inform potential responders that to establish such protection for trade secrets, commercial information, or non-individual financial information the submitting entity must provide with the information a written claim of business confidentiality and a concise statement of reasons supporting the claim.

[Utah Code § 63G-6a-409 \(2020\)](#)

[Utah Code § 63G-2-309\(1\)\(a\)\(i\) \(2019\)](#)

*Utah Admin. Rules R33-5-101 (January 22, 2021)*

## **Specifications—**

Solicitations for procurements issued by the District shall include specifications. Each specification shall be drafted with the objective of clearly describing the District’s requirements and encouraging competition and shall emphasize the functional or performance criteria necessary to meet the District’s needs.

A person with a conflict of interest, or who anticipates responding to the proposal for which the specifications are written, may not participate in writing specifications. The District may retain the services of a person to assist in writing specifications, scopes of work, requirements, qualifications, or other components of a solicitation. However, a person retained to assist in writing specifications may not, at any time during the procurement process, be employed in any capacity by, nor have an ownership interest in, an individual, public or private corporation, governmental entity, partnership, or unincorporated association bidding on or submitting a proposal in response to the solicitation. (This restriction does not apply to design-build construction projects or to a procurement that the Procurement Official or Board of Education or its designee determines in writing that the restriction should not apply.) Violations may result in the bidder or offeror being declared ineligible for award of the contract, the solicitation being canceled, termination of an

awarded contract, or any other action determined to be appropriate by the Board of Education or its designee.

Brand name or equal specifications may be used when the phrase “or equivalent” is included within the specification and as many other brand names as practicable are also included in the specification. Brand name or equal specifications shall include a description of the particular design and functional or performance characteristics required. Specifications unique to the brands shall be described in sufficient detail that another person can respond with an equivalent brand. If only one brand can meet the requirement, the District shall solicit from as many providers of the brand as practicable. If there is only one provider that can meet the requirement, the District shall conduct the procurement as a sole source procurement in accordance with Policy CBF.

When a manufacturer’s specification is used in a solicitation, the solicitation shall state the minimum acceptable requirements of an equivalent. When practicable, the District shall name at least three manufacturer's specifications.

[Utah Code § 63G-6a-111 \(2016\)](#)

*Utah Admin. Rules R33-4-103 (January 22, 2021)*

## **Procurement Notice Requirements—**

The District shall post notice of a solicitation in one or more of the following ways:

- on the District’s main web site; or
- on a state web site that is owned, managed by, or provided under contract with, the Utah Division of Purchasing and General Services for posting a public procurement notice.

The notice shall be posted at least seven days before the day of the deadline for submitting a solicitation response. This notice period may be reduced if the Procurement Official signs a written statement that a shorter time is needed and that it has been determined that competition from multiple sources may be obtained within that shorter time period.

It is the responsibility of a person seeking information provided by a published notice of solicitation to seek out, find, and respond to the notice. As a courtesy and to promote competition, the District may—but is not required to—provide individual notice.

[Utah Code § 63G-6a-112 \(2021\)](#)

## **Price Based on Established Terms—**

In establishing the price of a procurement item, the District may use a price list, rate schedule, or catalog submitted by a vendor and accepted by the District or mandated by the District or a federal agency. The District may also establish the price based on a federal regulation for a health and human services program.

[Utah Code § 63G-6a-113 \(2016\)](#)

## **Cancellation of Solicitation—**

As provided for by statute, the District may cancel a solicitation if the Procurement Official determines that doing so is in the best interests of the District. When a solicitation is canceled in this way, the Procurement Official shall explain in writing the reasons for the cancellation and the District shall make that explanation available to the public for one year after the cancellation.

[Utah Code § 63G-6a-119 \(2020\)](#)

## **Cancellation and Rejection of Bids and Proposals—**

As provided in the regulations issued by the Procurement Policy Board, when it is in the best interests of the District to do so, the District may, prior to the deadline for response to a solicitation, cancel an invitation for bids, a request for proposals, or other solicitation or reject any or all bids or proposal responses, in whole or in part, as may be specified in the solicitation. When the District takes such an action, the reasons for the cancellation or rejection shall be made a part of the contract file and shall be available for public inspection. Following cancellation, the District shall either resolicit responses to a solicitation (using the same or revised specifications) or withdraw the requisition for the procurement items.

[Utah Code § 63G-6a-902 \(2020\)](#)

*Utah Admin. Rules R33-9-101 (January 22, 2021)*

## **Rejecting a Solicitation Response—**

The District may reject a solicitation response if it is not responsive, violates a solicitation requirement, or is submitted after the deadline. The District may reject a solicitation response if the submitting vendor is not responsible, is in violation of the procurement code or regulations, has engaged in unethical conduct, is subject to an outstanding tax lien, or if after submission there is a change in the vendor's circumstances which if known at the time of submission would have caused the District to reject the response. The District may also reject a response if the vendor fails to sign a contract awarded as a result of the response by the deadline established in the solicitation or within 90 days after award, if no deadline is specified. If the District rejects a solicitation response, it shall provide a written statement of the reasons to the vendor.

[Utah Code § 63G-6a-120 \(2020\)](#)

## **Procurement Official Authority Regarding Procurement and Contracts—**

The Procurement Official has authority to (1) manage and supervise any procurement to ensure, to the extent practicable, that taxpayers receive the best value; (2) prepare and issue standard specifications for procurement items; and (3) review contracts, coordinate contract compliance, conduct contract audits, and approve change orders. The Procurement Official may delegate the Official's duties and authorities to an employee of the District as the Official determines is appropriate.

At any stage of the procurement process, upon determining that a District procurement is out of compliance with the Utah Procurement Code or governing regulations, the Procurement Official may correct, amend, or cancel the procurement.

If, at any time during the term of a contract awarded by the District, the Procurement Official determines that the contract is out of compliance with the Utah Procurement Code or governing regulations, the Procurement Official may correct or amend the contract to bring it into compliance or cancel the contract, after consulting with legal counsel, if the Procurement Official determines that correcting, amending, or canceling the contract is in the District's best interest.

[Utah Code § 63G-6a-106\(3\) \(2021\)](#)

### **Correction of Immaterial Errors—**

A "solicitation" is an invitation for bids, request for proposals, or request for statement of qualifications.

A "vendor" is a person who seeks to enter into a contract with the District to provide a procurement item and includes a bidder, an offeror, an approved vendor; and a design professional.

An "immaterial error" is an irregularity or abnormality that is either a matter of form that does not affect substance or 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 vendors. Immaterial errors include (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.

[Utah Code § 63G-6a-103\(37\), \(82\), \(94\) \(2021\)](#)

The District may allow a vendor to correct an immaterial error in a responsive solicitation response. If correction is allowed, the District shall require it to be made in writing and shall establish a deadline for making the correction (corrections may not be accepted after the established deadline).

[Utah Code § 63G-6a-114 \(2020\)](#)

[Utah Code § 63G-6a-410\(7\) \(2020\)](#)

### **Request for Clarification or Additional Information—**

In this section, "solicitation," "vendor," and "immaterial error" have the same meaning as in "Correction of Immaterial Errors," above.

The District may, at any time, make a written request to a vendor to clarify information contained in a responsive solicitation response or to provide additional information that the District determines it needs to determine whether the vendor is responsible. If the District requests clarification or additional information, it shall

establish and enforce a deadline for submitting the information (the District may not accept information submitted after the established deadline).

[Utah Code § 63G-6a-115 \(2016\)](#)

## **Vendor Qualification—**

### *Determination of non-responsibility*

“Responsible” means being capable in all respects of meeting all the requirements of a solicitation and fully performing all the requirements of the resulting contract, including being financially solvent with sufficient financial resources to perform the contract.

[Utah Code § 63G-6a-103\(74\) \(2021\)](#)

If the District determines that a person is not responsible, that determination shall be made in writing in accordance with rules issued by the Procurement Policy Board. It may be grounds for a finding of non-responsibility if a person unreasonably fails to promptly supply information in connection with an inquiry with respect to responsibility. Subject to the Utah Government Records Access and Management Act and Policy GA, information furnished by a person in connection with a responsibility inquiry may not be disclosed outside of the District without prior written consent by the person.

[Utah Code § 63G-6a-903 \(2020\)](#)

The District shall reject bids or offers submitted by bidders or offerors who are determined to be non-responsible.

*Utah Admin. Rules R33-9-204(1) (January 22, 2021)*

### *Debarment*

The Procurement Official may, according to Policy CDA, either debar a person for cause from consideration for award of contracts for up to three years or suspend a person from consideration for award of contracts if there is cause to believe that the person has engaged in any activity that might lead to debarment.

A suspension may not be for more than three months unless an indictment has been issued for an offense which would cause debarment, in which case the suspension shall, if requested by the District’s attorney, remain in effect until after the trial of the suspended person.

Causes for debarment include:

- conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of a public or private contract or subcontract;
- conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which

currently, seriously, and directly affects responsibility as a contractor for the District;

- conviction under state or federal antitrust statutes;
- failure without good cause to perform in accordance with the terms of the contract;
- a violation of the Procurement Code or the District's procurement policies; or
- any other cause that the Procurement Official determines to be so serious and compelling as to affect responsibility as a contractor for the District, including debarment by another governmental entity.

The District may consider any cause for debarment as a basis for determining that a person responding to a solicitation is not responsible independent of any effort or proceeding to debar or suspend the person and even if the District does not choose to seek debarment or suspension.

[Utah Code § 63G-6a-904\(1\)\(a\), \(2\), \(3\), \(5\) \(2020\)](#)

Bids, offers, or other submissions received from any person that is suspended, debarred, or otherwise ineligible as of the due date for receipt of bids, proposals, or other submissions shall be rejected by the District.

*Utah Admin. Rules R33-9-301 (January 22, 2021)*

#### *Ineligible bidder or offeror*

A person with an outstanding tax lien in the state may not submit a quote, bid, or offer to the District, nor may such a person contract to provide a procurement item to the District. However, if the district Procurement Officer determines that it is in the best interests of the District to do so, the District may grant an exception to this prohibition for a specified and particular quote, bid, offer, or contract. The District may reject a quote, bid, or offer submitted in violation of this prohibition.

[Utah Code § 63G-6a-905 \(2013\)](#)

#### **Preferences—**

##### *Preference for providers of Utah products*

The District shall, for all procurements, give a reciprocal preference to those bidders offering procurement items that are produced, manufactured, mined, grown, or performed in Utah ("Utah items") over those bidders offering procurement items that are produced, manufactured, mined, grown, or performed in any state that gives or requires a preference to procurement items that are produced, manufactured, mined, grown, or performed in that state ("out of state preferred items"). The amount of reciprocal preference shall be equal to the amount of the preference applied by the other state for that particular procurement item. In order to receive a reciprocal preference under this section, the bidder must certify on the bid that the procurement



items offered are Utah items. Without that certification on the bid, the reciprocal preference is waived.

If the responsible bidder submitting the lowest responsive bid offers out of state preferred items, and if another responsible bidder has submitted a responsive bid offering Utah items, and with the benefit of the reciprocal preference, the bid of the other bidder is equal to or less than the original lowest bid, the District shall (1) notify the Utah items bidder that the bidder qualifies as a preferred bidder; and (2) make the purchase from the preferred bidder if the bidder agrees, in writing, to meet the low bid within 72 hours after the notice. The District shall include the exact price submitted by the lowest bidder in its notice to the preferred bidder. The District may not enter into a contract with any other bidder for the purchase until 72 hours have elapsed after notice to the preferred bidder. If there is more than one preferred bidder, the District shall award the contract to the willing preferred bidder who was the lowest preferred bidder originally. If there were two or more equally low preferred bidders, the District shall comply with the rules of the Procurement Policy Board to determine which bidder should be awarded the contract.

This section does not apply if application of the section might jeopardize the receipt of federal funds.

[Utah Code § 63G-6a-1002 \(2020\)](#)

If there are more than one equally low preferred low bids, then those preferred bids shall be treated as tie bids and resolved according to the procedure in Policy CBB.

*Utah Admin. Rules R33-10-101(2) (January 22, 2021)*

### *Preference for Utah contractors*

A “resident contractor” is a person, partnership, corporation, or other business entity that either has its principal place of business in Utah or that employs workers who are residents of this state when available; and also was transacting business on the date when bids for the public contract were first solicited.

When awarding contracts for construction, the District shall grant a resident contractor a reciprocal preference over a nonresident contractor from any state that gives or requires a preference to contractors from that state. The amount of the reciprocal preference shall be equal to the amount of the preference applied by the nonresident contractor’s state. To receive the reciprocal preference under this section, the bidder shall certify on the bid that the bidder qualifies as a resident contractor. Without that certification on the bid, the reciprocal preference is waived.

If the responsible contractor submitting the lowest responsive bid is a nonresident contractor and has a principal place of business in a state giving or requiring a preference to contractors from that state, and if a responsible resident contractor has also submitted a responsive bid, and, with the benefit of the reciprocal preference, the resident contractor’s bid is equal to or less than the original lowest bid, the District shall notify the resident contractor that the resident



contractor qualifies as a preferred resident contractor and issue the contract to the resident contractor if that contractor agrees, in writing, to meet the low bid within 72 hours after notice of preferred resident contractor status. The District notice shall include the exact price submitted by the lowest bidder. The District may not enter into a contract with any other bidder for the construction until 72 hours have elapsed after notice to the preferred resident contractor. If there is more than one preferred resident contractor, the District shall award the contract to the willing preferred resident contractor who was the lowest preferred resident contractor originally. If there were two or more equally low preferred resident contractors, the District shall comply with the rules of the Procurement Policy Board to determine which bidder should be awarded the contract.

This section does not apply if application of the section might jeopardize the receipt of federal funds.

[Utah Code § 63G-6a-1003 \(2020\)](#)

If there are more than one equally low preferred resident contractor, then those preferred resident contractors shall be treated as submitting tie bids and that tie resolved according to the procedure in Policy CBB.

[Utah Admin. Rules R33-10-102\(2\) \(January 22, 2021\)](#)

### *Federal requirements exception to preferences*

Neither the Utah products preference nor the Utah resident contractor preference apply to the extent that they conflict with federal requirements relating to a procurement that involves the expenditure of federal assistance, federal contract funds, or federal financial participation funds.

[Utah Code § 63G-6a-1004 \(2012\)](#)

## **Security—**

Bid, payment and performance bonds or other security may be required for procurement items as set forth in the invitation for bids. Bid, payment and performance bond amounts shall be as prescribed by applicable law or must be based upon the estimated level of risk associated with the procurement item but may not be increased above the estimated level of risk with the intent to reduce the number of qualified bidders.

### *Bid security*

Invitations for Bids and Requests for Proposals for construction contracts estimated to exceed \$50,000 shall require the submission of bid bond in an amount equal to at least 5% of the bid, at the time the bid is submitted. (The Procurement Official or Board of Education or its designee may require acceptable security in amounts lower than this.)

Invitations for Bids and Requests for Proposals for other procurements may require the submission of a bid security, including specifications for the form and

type of bid security, when the Procurement Official or Board of Education or its designee determines it is in the best interest of the District.

If a person fails to include the required bid security, the bid shall be deemed nonresponsive and ineligible for consideration of award except in the case that the security is provided on a bid on a re-solicitation, where there is only one bidder, or where the Procurement Official or Board of Education or its designee determines the failure is non-substantial. If acceptable bid security is not furnished, the bid shall be rejected as nonresponsive, unless the failure to comply is determined by the Procurement Official or Board of Education or its designee to be non-substantial. Failure to submit an acceptable bid security may be deemed non-substantial if:

1. the bid security is submitted on a form other than the required bid bond form and the bid security meets all other requirements including being issued by a surety meeting the applicable requirements and the contractor provides acceptable bid security by the close of business of the next succeeding business day after the District notifies the contractor of the defective bid security; or
2. only one bid is received, and there is not sufficient time to re-solicit; or
3. the amount of the bid security submitted, though less than the amount required by the invitation for bids, is equal to or greater than the difference in the price stated in the next higher acceptable bid; or
4. the bid security becomes inadequate as a result of the correction by the District of a mistake in the bid or bid modification, if the bidder increases the amount of guarantee to required limits within 48 hours after the bid opening.

If the successful bidder fails or refuses to enter into the contract or furnish the additional bonds required, then the bidder's bid security may be forfeited.

*Utah Admin. Rules R33-11-302 (January 22, 2021)*

### *Performance bonds for construction contracts*

A performance bond is required for all construction contracts in excess of \$50,000, in the amount of 100% of the contract price. The performance bond shall be delivered by the contractor to the District within fourteen days of the contractor receiving notice of the award of the construction contract. If a contractor fails to deliver the required performance bond, the contractor's bid/offer shall be rejected, its bid security may be enforced, and award of the contract may be made to the next lowest responsive and responsible bidder or highest ranked offeror.

[Utah Admin. Rules R33-11-201 \(January 22, 2021\)](#)

### *Performance bonds for other contracts*

When the Procurement Official or Board of Education or its designee determines that a surety or performance bond is necessary to guarantee the satisfactory completion of a contract, such bond may be required if

1. The solicitation contains a statement that a surety or performance bond is required in an amount:
  - a. equal to the amount of the bid or offer;
  - b. equal to the projected budget or estimated project cost (if published in the solicitation documents);
  - c. equal to the previous contract cost (if published in the solicitation documents)
  - d. which is less than the above amounts; and
2. The solicitation contains a detailed description of the work to be performed for which the surety or performance bond is required.

Surety or performance bonds should not be used to unreasonably eliminate competition or be of such unreasonable value as to eliminate competition.

*Utah Admin. Rules R33-11-302 (January 22, 2021)*

### *Payment bonds*

A payment bond is required for all construction contracts in excess of \$50,000, in the amount of 100% of the contract price. If a contractor fails to deliver the required payment bond, the contractor's bid or offer shall be rejected, its bid security may be enforced, and award of the contract shall be made to the next lowest responsive and responsible bidder or highest ranked offeror.

The Procurement Official or Board of Education or its designee may waive any bonding requirement if it determines in writing that:

1. bonds cannot reasonably be obtained for the work involved;
2. the cost of the bond exceeds the risk to the District; or
3. bonds are not necessary to protect the District's interests.

If the District fails to obtain a payment bond it may become liable for unpaid amounts as provided by Utah Code § 14-1-19.

*Utah Admin. Rules R33-11-303 (January 22, 2021)*