

## **Procurement: *Awarding Contracts by Bidding***

### **The Bidding Procurement Process—**

The District may award a contract for a procurement by the bidding process, in accordance with this policy, the rules of the Procurement Policy Board, and the Utah Procurement Code.

[Utah Code § 63G-6a-602 \(2020\)](#)

*Utah Admin. Rules R33-6-101 (January 22, 2021)*

### **The Bidding Process—**

#### *Invitation for bids*

Procurement by bidding begins when the District issues an invitation for bids. The invitation for bids shall include: (1) a description of the procurement item the District seeks; (2) instructions for submitting a bid, including the submission deadline; (3) the objective criteria the District will use to evaluate bids; (4) information about the time and manner of opening bids; and (5) terms and conditions that the District intends to include in a contract resulting from the bidding process. The invitation for bids includes all documents, including documents that are attached or incorporated by reference, used for soliciting bids to provide a procurement item to the District. The invitation for bids shall contain a “Bid Form” or other forms providing lines for the bid price, acknowledgment of receipt of any addenda, identification of other applicable submissions, and the bidder’s signature. Bidders may also be required to submit descriptive literature and/or product samples so that the District may evaluate whether a procurement item meets the specifications and other requirements set out in the invitation for bids. The invitation for bids shall be published according to the notice requirements in Policy CBA.

[Utah Code § 63G-6a-103\(40\) \(2021\)](#)

[Utah Code § 63G-6a-603 \(2020\)](#)

*Utah Admin. Rules R33-6-102(1) (January 22, 2021)*

A “specification” means any description of the physical or functional characteristics, or nature of a procurement item included in an invitation for bids or otherwise specified or agreed to by the District, including a description of a requirement for inspecting or testing a procurement item or preparing a procurement item for delivery. All specifications shall seek to promote the overall economy and best use for the purposes intended and encourage competition in satisfying the needs of the District and may not be unduly restrictive. This applies to all specifications used by the District, including those prepared by architects, engineers, designers, and draftsmen. (See “Specifications” in Policy CBA.)

[Utah Code § 63G-6a-103\(85\) \(2021\)](#)

[Utah Code § 63G-6a-111 \(2016\)](#)

### *Cancellation of invitation for bids*

As provided for by statute, the District may cancel an invitation for bids if the Procurement Official determines that doing so is in the best interests of the District. When an invitation for bids 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 \(2020\)](#)

As provided in the Procurement Policy Board regulations, an invitation for bids may be canceled by the District prior to the deadline for submission of bids when the District determines it is in its best interest. If the District cancels an invitation for bids, the reasons for the cancellation shall be made part of the procurement file and shall be available for public inspection. The District shall then either re-solicit bids (using the same or revised specifications) or withdraw the requisition for the procurement item or items.

[Utah Code § 63G-6a-902 \(2020\)](#)

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

#### *No bids submitted*

If there is no initial response to an invitation for bids, the Procurement Official may:

1. contact the known supplier community to determine why there were no responses to the invitation;
2. research the potential vendor community; and,
3. modify the invitation for bids based upon the information gathered.

If the District has modified the invitation for bids and re-issued it and still receives no bids or there is insufficient competition, the Procurement Official shall require the District to further modify the procurement documents or cancel the requisition for the procurement item(s). (If the requirements set forth in Policy CBA for making an award based on a single response to a solicitation are met, the Board may make an award based on a single bid.)

*Utah Admin. Rules R33-9-102 (January 22, 2021)*

*Utah Admin. Rules R33-4-109 (January 22, 2021)*

#### *Bid opening and acceptance*

A “bidder” is a person who responds to an invitation for bids. A “responsible” bidder is one who is capable, in all respects, of meeting all the requirements of the invitation for bids and fully performing all the requirements of the resulting contract, including being financially solvent with sufficient financial resources to perform the contract. A “responsive” bid is one that conforms in all material respects to the invitation for bids.

[Utah Code § 63G-6a-103\(4\), \(74\), \(75\) \(2021\)](#)

The District shall accept bids as provided in the invitation for bids and may not open a bid until after the deadline for submitting bids. A person who submits a bid may not, after the submission deadline, make a change to the bid if the change is prejudicial to either the interest of the District or to fair competition. The District may not accept a bid after the submission deadline except when the District determines that an error on the part of the District or its employee resulted in the bid not being received by the due date and time.

[Utah Code § 63G-6a-604 \(2020\)](#)

*Correction or clarification of bids*

The Board of Education or its designee may allow a vendor to correct an immaterial error in a bid, as provided in Policy CBA and may also request a vendor to clarify information contained in a bid or provide additional information relating to responsibility, as provided in Policy CBA.

*Cancellation before award*

When the District determines before award but after opening that the specifications, scope of work or other requirements contained in the invitation for bid documents were not met by any bidder or offeror the invitation for bids shall be cancelled.

In addition, the District may cancel an invitation for bids before award but after opening all bids or offers when the District determines in writing that an infraction of code, rule, or policy has occurred or that there is other good cause, including:

1. inadequate, erroneous, or ambiguous specifications or requirements were cited in the invitation for bids;
2. the bid specifications have been or must be revised;
3. the procurement item(s) being solicited are no longer required;
4. the invitation for bids did not provide for consideration of all factors of cost to the District, such as cost of transportation, warranties, service and maintenance;
5. the bids received indicate that the District's needs can be satisfied by a less expensive procurement item differing from that in the invitation for bids;
6. except as provided below regarding bids which exceed available funds, all otherwise acceptable bids or offers received are at unreasonable prices, or only one bid or offer is received and the Procurement Official or Board of Education or its designee cannot determine the reasonableness of the bid price;
7. the responses to the invitation for bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or,
8. no responsive bid has been received from a responsible bidder.

*Utah Admin. Rules R33-9-103 (January 22, 2021)*

If the District has an existing contract for a procurement item that the invitation for bids is to obtain and the bidding process is delayed due to an unintentional error, the District may permit the extension of the existing contract.

[Utah Code § 63G-6a-802.7\(1\)\(b\)\(i\) \(2020\)](#)

### *Evaluation of bids and awarding of contract*

The District shall evaluate bids using the objective criteria described in the invitation for bids and to achieve the greatest long-term value to the District. Criteria not described in the invitation for bids may not be used to evaluate a bid.

[Utah Code § 63G-6a-606 \(2020\)](#)

Any bid that is determined to be nonresponsive shall be rejected. Any bid that is submitted by a bidder that is determined to be not responsible shall be rejected.

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

The originals of all bids rejected as nonresponsive or because the bidder was determined to be not responsible and all written findings with respect to such rejections shall be made part of the procurement file and made available for public inspection.

*Utah Admin. Rules R33-9-204(3) (January 22, 2021)*

Multiple or alternate bids will not be accepted, unless otherwise specifically required or allowed in the invitation for bids. If a bidder submits multiple or alternate bids that are not requested in the invitation for bids, the Procurement Official will only accept the bidder's first bid and will not accept any other bids constituting multiple or alternate bids.

*Utah Admin. Rules R33-6-110 (January 22, 2021)*

After evaluating the bids, the District shall:

- award the contract as soon as practicable to the responsible bidder who submits the lowest responsive bid and publish the name and bid amount of the bidder to whom the contract is awarded or
- cancel the invitation for bids without awarding a contract and publish a notice of the cancellation that includes an explanation of the reasons for cancelling the invitation for bids.

[Utah Code § 63G-6a-606\(3\) \(2021\)](#)

### Re-solicitation

Re-solicitation of a bid may occur only if the Procurement Official or Board of Education or its designee determines that:

1. A material change in the scope of work or specifications has occurred;
2. procedures outlined in the Utah Procurement Code were not followed;
3. additional public notice is desired;

4. there was a lack of adequate competition; or
5. other reasons exist such that it is in the best interest of the District.

Re-solicitation may not be used to avoid awarding a contract to a qualified vendor in an attempt to steer the award of a contract to a favored vendor.

*Utah Admin. Rules R33-6-108 (January 22, 2021)*

### Resolution of tie bids

A “tie bid” means that the lowest responsive bids of responsible bidders are identical in price. In the event of tie bids, the District shall resolve the tie in a fair manner, as determined in writing by the Procurement Official.

[Utah Code § 63G-6a-103\(91\) \(2021\)](#)

[Utah Code § 63G-6a-608 \(2020\)](#)

### *Publication of award*

The District shall, on the day on which the award of a contract is announced, make available to each bidder and to the public a notice that includes: (1) the name of the bidder to which the contract is awarded and the price(s) of the procurement item(s); and (2) the names and the prices of each bidder to which the contract is not awarded.

*Utah Admin. Rules R33-6-112 (January 22, 2021)*