

## **Procurement: *Awarding Contracts by Request for Proposals***

### **Definitions—**

- “Design-build” means the procurement of design professional services and construction by the use of a single contract with the design-build provider.
- “Service” means labor, effort, or work to produce a result that is beneficial to a procurement unit and includes a professional service. “Service” does not include labor, effort, or work provided under an employment agreement or a collective bargaining agreement.
- “Professional service” means labor, effort, or work that requires specialized knowledge, expertise, and discretion, including labor, effort, or work in the field of (a) accounting, (b) administrative law judge service, (c) architecture, (d) construction design and management, (e) engineering, (f) financial services, (g) information technology, (h) law, (i) medicine, (j) psychiatry, or (k) underwriting.
- A “public-private partnership” means an arrangement or agreement between a procurement unit and one or more contractors to provide for a public need through the development or operation of a project in which the contractor or contractors share with the procurement unit the responsibility or risk of developing, owning, maintaining, financing, or operating the project.

[Utah Code § 63G-6a-103\(28\), \(59\), \(66\), \(78\) \(2021\)](#)

### **Request for Proposals—**

The District may use the request for proposals procurement process in accordance with rules of the Utah Procurement Policy Board. Procurement of design professional services (including architect or engineer services) is governed by Policy CCF.

[Utah Code § 63G-6a-702 \(2020\)](#)

[Utah Code § 63G-6a-1911\(3\) \(2020\)](#)

### **Specifications—**

The specifications for the request for proposals shall be developed according to the requirements and process set out in Policy CBA.

### **Request for Proposals Process—**

The District begins procurement through the request for proposals process by issuing a request for proposals. The District shall publish a request for proposals in accordance with the notice requirements of Policy CBA.

[Utah Code § 63G-6a-703\(1\), \(3\) \(2020\)](#)

*Content of request*

A request for proposals shall include:

1. a description of the procurement item the District seeks;
2. instructions for submitting a proposal, including the deadline for submitting a proposal;
3. the objective criteria, including, if applicable, cost, and subjective criteria that the District will use to evaluate proposals;
4. information about the time and manner of opening proposals; and
5. terms and conditions that the District intends to include in a contract resulting from the request for proposals process.

[Utah Code § 63G-6a-703\(2\) \(2020\)](#)

#### *Addenda to requests for proposals*

After the due date and time for submitting a response to a request for proposals, at the discretion of the Procurement Official, the District may issue an addendum to the request for proposals that has limited application only to offerors that have submitted proposals, if the addendum does not change the request for proposals in a way that, in the opinion of the Official, would likely have affected the number of proposals submitted in response to the request for proposals had the addendum been included in the original request for proposals.

[Utah Code § 63G-6a-704.4 \(2020\)](#)

#### *Evaluation criteria*

Each proposal shall be evaluated using only the criteria described in the request for proposals.

[Utah Code § 63G-6a-707\(3\), \(4\) \(2020\)](#)

#### *Exceptions to terms and conditions*

Offerors requesting exceptions or additions to the standard terms and conditions published in the request for proposals must include the exceptions and/or additions with the proposal response. Exceptions or additions submitted after the date and time for receipt of proposals will not be considered unless there is only one offeror that responds to the request for proposals, the exceptions and/or additions have been approved by the District's legal counsel, and it is determined by the Board of Education or its designee that it is not beneficial to the District to republish the request for proposals. Offerors may not submit requests for exceptions and/or additions by reference to a vendor's website or URL.

The District may refuse to negotiate exceptions or additions:

1. that are determined to be excessive;

2. that are inconsistent with similar contracts of the District;
3. to warranties, insurance, indemnification provisions that are necessary to protect the District after consultation with legal counsel;
4. where the request for proposals specifically prohibits exceptions and/or additions; or
5. that are not in the best interest of the District.

If negotiations are permitted, the District may negotiate exceptions or additions with offerors, beginning in order with the offeror submitting the fewest exceptions or additions to the offeror submitting the greatest number of exceptions or additions. Contracts may become effective as negotiations are completed.

If, in the negotiations of exceptions and/or additions with a particular offeror, an agreement is not reached, after a reasonable amount of time, as determined by the District, the negotiations may be terminated and a contract not awarded to that offeror and the District may move to the next eligible offeror.

*Utah Admin. Rules R33-7-104 (January 22, 2021)*

#### *Cancellation of request for proposals*

As provided for by statute, the District may cancel a request for proposals if the Procurement Official determines that doing so is in the best interests of the District. When a request for proposals 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, a request for proposals may be canceled by the District prior to the deadline for submission of proposals when the Procurement Official determines it is in the District's best interest. If the District cancels a request for proposals, 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 proposals (using the same or revised specifications) or withdraw the requisition for the procurement item or items.

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

#### *No proposals submitted*

If there is no initial response to a request for proposals, the Procurement Official may:

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

If the District has modified the request for proposals and re-issued it and still receives no proposals 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).

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

#### *Proposal opening and acceptance*

The District shall accept proposals as provided in the request for proposals and may not open a proposal until after the deadline for submitting proposals. A person who submits a proposal may not, after the submission deadline, make a change to the proposal if the change is prejudicial to either the interest of the District or to fair competition. The District shall not disclose the contents of a proposal except as provided by [Utah Code § 63G-2-305\(6\)](#).

[Utah Code § 63G-6a-704\(1\), \(2\) \(2020\)](#)

#### *Rejection of Non-responsible or Nonresponsive Proposals*

At any time during the request for proposals process, the District may reject a proposal if it determines that the person submitting the proposal is not responsible or that the proposal is not responsive or does not meet mandatory minimum requirements stated in the request for proposals. If the District rejects a proposal in this way, it shall provide the vendor who submitted the proposal a written statement of the reasons for the rejection.

[Utah Code § 63G-6a-120 \(2020\)](#)

#### *Cancellation before award*

The District may cancel a request for proposals before award but after opening if it determines in writing that:

1. the scope of work or other requirements in the request for proposals were not met by any person and all responses have been determined to be either nonresponsive or from vendors who are not responsible;
2. an infraction of code, rule, or policy has occurred;
3. inadequate, erroneous, or ambiguous specifications or requirements were cited in the request for proposals;
4. the request specifications have been or must be revised;
5. the procurement item(s) being solicited are no longer required;
6. the request for proposals did not provide for consideration of all factors of cost to the District, such as cost of transportation, warranties, service and maintenance;

7. the proposals received indicate that the District's needs can be satisfied by a less expensive procurement item differing from that in the request for proposals;
8. except as provided below regarding proposals which exceed available funds, all otherwise acceptable proposals received are at unreasonable prices, or only one proposal is received and the Procurement Official cannot determine the reasonableness of the price or cost proposal;
9. other reasons specified in the Procurement Code or Administrative Rule; or,
10. other circumstances deemed to constitute reasonable cause by the Procurement Official.

However, the District may not cancel and reissue a request for proposals to steer a contract to a favored vendor or (except as permitted under protest and appeal provisions) to make a vendor who was previously disqualified or rejected eligible for a contract award for the same procurement item.

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

If the District has an existing contract for a procurement item that the request for proposals is to obtain and the request for proposals is delayed due to an unintentional error, the District may permit the extension of the existing contract as permitted in Policy CBF.

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

#### *Correction or clarification of proposal or cancellation of contract*

The District may allow a vendor to correct an immaterial error in a proposal, as provided in Policy CBA. However, except as permitted with regard to best and final offers, as set forth below, a vendor may not change the total amount of the cost proposal after the deadline for submitting a cost proposal and before a contract is awarded. (This does not apply to a change in the contract price during contract administration, as may otherwise be allowed under these policies.).

The District may have discussions with an offeror to obtain a more complete understanding of whether the offeror is responsible or the proposal is responsive. The District may reject a proposal if after such discussions it determines that the offeror is not responsible or the proposal is not responsive.

[Utah Code § 63G-6a-704.6 \(2020\)](#)

Offerors may not correct errors, deficiencies, or incomplete responses in a proposal from an offeror who has been determined to be not responsible, or a proposal that is not responsive, or that does not meet the mandatory minimum requirements stated in the request for proposals.

#### *Establishment of evaluation committee*

The District shall appoint an evaluation committee consisting of at least three individuals to evaluate the proposals. Committee members shall have at least a

general familiarity with or a basic understanding of either (1) the technical requirements relating to the type of procurement item that is the subject of the request for proposals or (2) the need that the request is intended to address. The District shall ensure that the evaluation committee and each individual participating in the evaluation process (a) does not have a conflict of interest with any of the offerors, (b) can fairly evaluate each proposal, (c) does not contact or communicate with an offeror outside the official evaluation committee process; and (d) conducts or participates in the evaluation in a manner that ensures a fair and competitive process and avoids the appearance of impropriety. The District may authorize the evaluation committee to receive assistance in better understanding a technical issue involved in the request for proposals from an expert or consultant. Generally, each member of the evaluation committee is prohibited from knowing, or having access to, any information relating to the cost, or the scoring of the cost, of a proposal until after the committee submits its final recommended scores on all other criteria to the District. However, this restriction does not apply if the Board of Education or other individual designated by Procurement Policy Board rule signs a written statement (a) indicating that, due to the nature of the proposal or other circumstances, it is in the best interest of the District to waive compliance with this restriction and (b) describing the nature of the proposal and the other circumstances relied upon to waive compliance with the restriction, and also makes the written statement available to the public upon request.

[Utah Code § 63G-6a-707\(1\), \(5\), \(6\), \(7\) \(2020\)](#)

### *Evaluation of proposals*

#### Initial review

The District shall perform an initial review of submitted proposals to determine whether the proposals satisfy any pass/fail minimum requirements set forth in the request for proposals and whether the proposals are responsive and responsible or in violation of the Utah Procurement Code. Examples of possible pass/fail minimum requirements include timeliness of receipt of proposals, qualifications, certifications, licensing, experience, compliance with State or Federal regulations, services provided, product availability, equipment, or other pass/fail minimum requirements set forth in the request for proposals. The evaluation committee may not review proposals from offerors determined to be not responsible or proposals which do not meet the minimum requirements or which are deemed nonresponsive or in violation of the Procurement Code.

*Utah Admin. Rules R33-7-703(1) (January 22, 2021)*

The Procurement Official may reject any proposal that is determined to be nonresponsive or which is submitted by a person determined to be not responsible.

The originals of all rejected proposals 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(1), (3) (January 22, 2021)*

### Evaluation procedure

The evaluation committee shall evaluate each responsive proposal from a responsible offeror which has not been disqualified upon initial review and determine which proposal provides the best value to the District. Each proposal shall be evaluated and scores awarded using the evaluation criteria and in accordance with the process as described in the request for proposals. Criteria not described in the request for proposals may not be used to evaluate the proposals.

#### [Utah Code § 63G-6a-707\(1\), \(2\), \(3\), \(4\) \(2020\)](#)

Prior to the evaluation and scoring of proposals, the District will meet to:

1. explain the evaluation and scoring process;
2. discuss requirements and prohibitions regarding socialization with vendors as set forth in [R33-24-104](#), financial conflicts of interest as set forth in [R33-24-105](#), personal relationships, favoritism, or bias as set forth in [R33-24-106](#), disclosing confidential information contained in proposals or the deliberations and scoring of the evaluation committee, and ethical standards for an employee involved in the procurement process as set forth in [R33-24-108](#);
3. review the scoring sheet and evaluation criteria set forth in the request for proposals; and
4. provide a copy of Administrative Rule R33-7-703 to the evaluation committee, district staff involved in the request for proposals, and any other person that will have access to the proposals.

Utah Admin. Rules R33-7-703(2) (January 22, 2021)

At each stage of the request for proposals process, the District is required to ensure that evaluation committee members, employees of the District, and any other person participating in the request for proposals process does not have a conflict of interest with any of the offerors, do not contact or communicate with an offeror about the requests for proposals outside the official process, and conduct or participate in the request for proposals process in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.

Utah Admin. Rules R33-7-703(4)) (January 22, 2021)

Prior to participation in any phase of the request for proposals process, all members of the evaluation committee must sign a written statement certifying that they do not have a conflict of interest.

Utah Admin. Rules R33-7-703(3) (January 22, 2021)

Unless an exception is authorized by the Procurement Official, in order to avoid cost influencing the evaluation committee's scoring of non-price criteria, the evaluation committee is prohibited from knowing or having access to any information relating to the cost, or the scoring of the cost, of a proposal until after the committee has finalized its scoring of non-price technical criteria in the request for proposals and submitted those scores to the District.



[Utah Code § 63G-7-707\(7\) \(2020\)](#)

Utah Admin. Rules R33-7-703(5) (January 22, 2021)

After each proposal has been independently evaluated by each member of the evaluation committee, each committee member shall independently assign a preliminary draft score for each proposal for each of the non-priced technical criteria listed in the request for proposals. After completing the preliminary draft scoring, the evaluation committee shall enter into deliberations to review each committee member's preliminary draft scores, resolve any factual disagreements, modify their preliminary draft scores based on their updated understanding of the facts, and derive the committee's final recommended consensus scoring for the non-priced technical criteria of each proposal.

Utah Admin. Rules R33-7-703(7)(a) (January 22, 2021)

During the evaluation process, the evaluation committee may recommend to the District that a proposal be rejected as made by a non-responsible offeror, as being non-responsive, as not meeting the mandatory minimum requirements, or as not meeting any applicable minimum score threshold.

Utah Admin. Rules R33-7-703(7)(b) (January 22, 2021)

In order to score proposals fairly, an evaluation committee member must be present at each evaluation meeting and must review each proposal, including (if applicable) oral presentations. If a committee member does not attend an evaluation committee meeting, the meeting may be canceled and rescheduled. If a committee member fails to attend an evaluation committee meeting, leaves a meeting early, or fails for any reason to fulfill the duties and obligations of a committee member, that member shall be removed from the evaluation committee. The remainder of the committee may proceed with the evaluation, provided there are at least three evaluation committee members remaining. A committee member may attend or participate on an evaluation committee via electronic means (for example, a conference call, a webcam, an online business application, or other means).

Utah Admin. Rules R33-7-703(7)(c), (d), (e) (January 22, 2021)

At any time during the evaluation process, the evaluation committee may, with the approval of the District and subject to the requirements set forth below, request best and final offers from responsible offerors who have submitted responsive proposals that meet the minimum qualifications, evaluation criteria, or applicable thresholds and evaluate those offers in accordance with [Utah Code § 63G-6a-707.5](#), as described below.

At the conclusion of the evaluation process, an evaluation committee shall prepare and submit to the District a written statement that: (1) recommends a proposal for an award of a contract (if the evaluation committee decides to recommend a proposal); (2) contains the score awarded to the recommended proposal based on the criteria stated in the request for proposals; and (3) explains how the recommended proposal provides the best value to the District.



[Utah Code § 63G-6a-707\(10\) \(2020\)](#)

The evaluation committee may not change its final recommended scores for the proposals after they have been submitted to the District.

[Utah Code §63G-6a-707\(8\) \(2020\)](#)

The Procurement Official may remove a member of an evaluation committee for (1) having a conflict of interest or the appearance of a conflict of interest with a person responding to a request for proposals, (2) having an unlawful bias or the appearance of an unlawful bias against a person responding to a request for proposals, (3) having a pattern of arbitrary, capricious, or clearly erroneous scores that are unexplainable or unjustifiable (4) having inappropriate contact or communication with a person responding to the request for proposals, (5) socializing inappropriately with a person responding to the request for proposals, (6) engaging in any other action or having any other association that causes the Board to conclude that the individual cannot fairly evaluate a response to the request for proposals, or (7) any other violation of law, rule, or policy. The District may reconstitute the committee in any way it deems appropriate to cure any such impropriety. If the impropriety cannot be cured by replacing a member, then a new committee may be appointed or the procurement cancelled and the request for proposals reissued.

*Utah Admin. Rules R33-7-703(12) (January 22, 2021)*

Scoring of proposals

The scoring of evaluation criteria, other than cost, for proposals meeting the mandatory minimum requirements in a request for proposals shall be based on the scoring system set forth in the RFP.

*Utah Admin. Rules R33-7-704 (January 22, 2021)*

Independent judgment by evaluation committee members

Evaluators are required to exercise independent judgment in a manner that is not dependent on anyone else's opinions or wishes. Evaluators must not allow their scoring to be inappropriately influenced by another person's wishes that additional or fewer points be awarded to a particular offeror. Evaluators may seek to increase their knowledge before scoring by asking questions and seeking appropriate information from the District. Otherwise, evaluators should not discuss proposals or the scoring of proposals with other persons not on the evaluation committee.

The exercise of independent judgment applies not only to possible inappropriate influences from outside the evaluation committee, but also to inappropriate influences from within the committee. It is acceptable for there to be discussion and debate within the committee regarding how well a proposal meets the evaluation criteria. However, open discussion and debate may not lead to coercion or intimidation on the part of one committee member to influence the scoring of another committee member.

Evaluators may not act on their own or in concert with another evaluation committee member to inappropriately steer an award to a favored vendor or to disfavor a particular vendor.

Evaluators are required to report any attempts by others to improperly influence any evaluator's scoring to favor or disfavor a particular offeror.

If an evaluator feels that the evaluator's independence has been compromised, the evaluator must recuse himself or herself from the evaluation process.

*Utah Admin. Rules R33-7-705 (January 22, 2021)*

### *Best and final offers*

The best and final offers process is an optional step in the evaluation phase of the request for proposals process in which offerors are requested to modify their proposals. (It is not available for use with any other type of procurement process.) If the necessary conditions are present, the evaluation committee, with the approval of the Procurement Official, may request and evaluate best and final offers from responsible offerors who have submitted responsive proposals that meet the minimum qualifications, evaluation criteria, or applicable score thresholds identified in the request for proposals for the stage of the process at which the final and best offers are being requested. The evaluation committee may only request best and final offers if one of the following circumstances exists:

1. no single proposal addresses all the specifications stated in the request for proposals;
2. all proposals received are unclear or deficient in one or more respects;
3. all cost proposals exceed the identified budget or the District's available funding; or
4. two or more proposals receive an identical evaluation score that is the highest score.

In a best and final offer, an offeror may only address the issues described in the request for best and final offers; the offeror may not correct a material error or deficiency in the original proposal or address any other issue not described in the request for best and final offers. The best and final offers process may not be used to change a determination that an offeror is not responsive or that an offer is not responsive.

The request for best and final offers shall clearly specify the issues that the District requests the offerors to address in their best and final offers and how the best and final offers will be evaluated and scored in accordance with the evaluation procedures of this policy. The request shall also establish a deadline for an offeror to submit a best and final offer and, if applicable, establish a schedule and procedure for conducting discussions with offerors concerning the best and final offers. After the deadline for submitting best and final offers, the evaluation committee shall

evaluate the best and final offers using the criteria described in the request for proposals.

Unsolicited best and final offers will not be accepted and may not be considered by the District. If an offeror fails to submit a best and final offer, the offer submitted by the offeror before the request for best and final offers shall be treated as the offeror's best and final offer.

In conducting the best and final offers process, the District shall (a) maintain the confidentiality of the information the District receives from an offeror (including cost information) until a contract has been awarded or the request for proposals canceled, (b) ensure that each offeror receives fair and equal treatment, and (c) safeguard the integrity of the scope of the original request for proposals, except as specifically provided otherwise in this section regarding best and final offers.

When a request for best and final offers is issued to reduce cost proposals, the District may specify the scope of work reductions the District is making to generate proposals within the budget or available funding or may invite offerors to specify the scope of work reductions being made so that the reduced cost proposal is within the budget or available funding. However, the District is not required to accept a scope of work reduction proposed by an offeror. A reduction in the scope of work may not eliminate a component identified as a minimum mandatory requirement in the request for proposals, nor may it alter the nature of the original request to the extent that a request for proposals for the reduced scope of work would have likely attracted a significantly different set of offerors submitting proposals. A best and final offer submitted with a reduced cost proposal shall include an itemized list identifying specific reductions in the proposed scope of work that correspond to the reduced cost proposal.

When a request for best and final offers is issued because two or more proposals received an identical and highest score, the request may only be issued to those offerors whose proposals received that highest score. The offerors responding to this request may revise the technical aspects of their proposal, their cost proposal (as provided in the prior paragraph), or both.

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

When selecting a construction manager/general contractor for a construction project and the contract is to be awarded based solely on (a) the qualifications of the construction manager / general contractor and (b) the management fee to be paid to the construction manager / general contractor, the evaluation committee in recommending an award is not required to explain how the recommended proposal provides the best value to the District. A "management fee" includes only fees for preconstruction phase services, monthly supervision fees for the construction phase, and overhead and profit for the construction phase.

[Utah Code § 63G-6a-707\(10\)\(b\) \(2020\)](#)

[Utah Admin. Rules R33-13-205\(3\) \(January 22, 2021\)](#)

*Award of contract*

After completion of the evaluation process, the Procurement Official shall review the written statement submitted to the District by the evaluation committee and shall either award the contract as recommended or shall cancel the request for proposals or take other action as permitted under this policy.

[Utah Code § 63G-6a-702\(1\) \(2020\)](#)

[Utah Code § 63G-6a-707\(10\) \(2020\)](#)