

Procurement: *Awarding Contracts by Bidding*

Bidding is the Usual Standard Procurement Process—

Except as provided in Policy CBC (Awarding Contracts by Reverse Auction Bidding), Policy CBD (Awarding Contracts by Request for Proposals), and Policy CBE (Small Purchases), the District shall award a contract for a procurement by bidding, in accordance with this policy, the rules of the Procurement Policy Board, and the Utah Procurement Code. Awarding contracts by bidding is the appropriate procurement process to follow when cost is the major factor in determining the award of a procurement.

Utah Code § 63G-6a-602 (2013)

The Bidding Process

Invitation for bids

Procurement by bidding begins when the District issues an invitation for bids. The invitation for bids shall (1) state the period of time during which bids will be accepted, (2) describe the manner in which a bid shall be submitted, (3) state the place where a bid shall be submitted, (4) include, or incorporate by reference, a description of the procurement items sought, (5) include, or incorporate by reference, the objective criteria that will be used to evaluate the bids; and (6) include, or incorporate by reference, the required contractual terms and conditions. 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 a procurement unit. The invitation for bids shall be published according to the notice requirements in Policy CBA.

Utah Code § 63G-6a-103(24) (2013); § 63G-6a-603 (2013)

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.

Utah Code § 63G-6a-103(44) (2013); § 63G-6a-407 (2013)

Bid opening and acceptance

A “bidder” is a person who responds to an invitation for bids. A “responsible” bidder is one who both (1) is capable, in all respects, to fully perform the contract requirements solicited in the invitation for bids and (2) has the integrity and reliability to ensure good faith performance. A “responsive” bid is one that conforms in all material respects to the invitation for bids.

Utah Code § 63G-6a-103(2), (40), (41) (2013)

Bids shall be opened publicly and in the presence of one or more witnesses, unless an electronic bid opening process is used where bidders may see the opening of the bid electronically, and at the time and place indicated in the invitation for bids. (A different process is used for bidding by reverse auction under Policy CBC.) Bids shall be accepted unconditionally, without alteration or correction, except as otherwise authorized by District policies. The district Procurement Officer shall reject any bid that is not responsive or responsible. Nonresponsive bids include those that are conditional, attempt to modify the bid requirements, contain additional terms or conditions, or fail to conform to the requirements or specifications of the invitation for bids. Nonresponsible bids include any bid where the Procurement Officer reasonably concludes that the bidder or an employee, agent, or subcontractor of the bidder, at any tier, is unable to satisfactorily fulfill the bid requirements. The District may not accept a bid after the time for submission of a bid has expired. The Procurement Officer shall record the name of each bidder and the amount of each bid and make that information available for public disclosure after the bid is awarded.

Utah Code § 63G-6a-604 (2013)

Correction or withdrawal of bids

The following changes may not be made to a bid after the bid opening: (1) changes in bid pricing, (2) changes in the cost evaluation formula, or (3) changes in other provisions that are prejudicial to fair competition or to the interest of the District. Apart from changes to those aspects of a bid, the District may allow correction or withdrawal of inadvertently erroneous bids, or may cancel an award or a contract that is based on an unintentionally erroneous bid, consistent with the rules issued by the Procurement Policy Board. A decision to permit the correction or withdrawal of a bid or the cancellation of an award or a contract shall be supported in a written document, signed by the Board of Education or the Procurement Officer. The decision to permit such correction or withdrawal or to cancel an award or contract is final and conclusive unless it is arbitrary and capricious or clearly erroneous.

Utah Code § 63G-6a-605 (2013); § 63G-6a-1911(1) (2013)

Evaluation of bids and awarding of contract

The District shall evaluate each bid using the objective criteria described in the invitation for bids, which may include experience, performance ratings,

inspection, testing, quality, workmanship, time and manner of delivery, references, financial stability, cost, suitability for a particular purpose, or other objective criteria specified in the invitation for bids. Criteria not described in the invitation for bids may not be used to evaluate a bid.

The District shall:

- award the contract as soon as practicable to the lowest responsive and responsible bidder who meets the objective criteria described in the invitation for bids; or
- if that bidder is disqualified as provided for below, to the next lowest responsive and responsible bidder who meets the objective criteria described in the invitation for bids; or
- cancel the invitation for bids without awarding a contract.

The Board of Education or the district Procurement Officer may disqualify a bidder for (1) violating the District's procurement policies, the Procurement Policy Board rules, or the Procurement Code, (2) violating a requirement of the invitation for bids, (3) unlawful or unethical conduct, or (4), a change in circumstance that, had the change been known at the time the bid was submitted, would have caused the bidder to not be the lowest responsive and responsible bidder who meets the objective criteria described in the invitation for bids. Upon disqualification, the Board of Education or the district Procurement Officer shall make a written finding stating the reasons for disqualification and provide a copy of that finding to the disqualified bidder. If the District cancels an invitation for bids without awarding a contract, the District shall make available for public inspection a written justification for the cancellation.

Utah Code § 63G-6a-606 (2013)

Action when all bids are over budget

If the district Business Administrator certifies that all accepted bids exceed available funds and that the lowest responsive and responsible bidder does not exceed the available funds by more than 5%, the Procurement Officer may negotiate an adjustment of the bid price and bid requirements with the lowest responsive and responsible bidder in order to bring the bid within the amount of available funds. However, the Procurement Officer may not adjust the bid requirements if there is a substantial likelihood that, had the adjustment been included in the invitation for bids, a person that did not submit a bid would have submitted a responsive, responsible, and competitive bid.

Utah Code § 53A-3-303 (2008); § 63G-6a-607 (2013)

Resolution of tie bids

A “tie bid” means that the lowest responsive and responsible bids are identical in price. Subject to any rules issued by the Procurement Policy Board, the Procurement Officer shall resolve a tie bid in accordance with a method selected by the Procurement Officer, which may include any of the following: (1) awarding the bid to the to the tie bidder who (a) is a provider of state products, if no other tie bidder is a responsive provider of state products, or (b) is closest to the point of delivery, or (c) received the previous award, or (d) will provide the earliest delivery date; or (2) by drawing lots; or (3) by any other reasonable method of resolving a tie bid. The method chosen by the procurement officer to resolve a tie bid shall be at the sole discretion of the procurement officer, subject to any rules by the Procurement Policy Board.

Utah Code § 63G-6a-103(49) (2013); § 63G-6a-608 (2013)

Multiple Stage Bidding

Subject to any rules issued by the Procurement Policy Board, the District may conduct a bid in multiple stages, to (a) narrow the number of bidders who will progress to a subsequent stage, (b) prequalify bidders for subsequent stages, in accordance with Policy CBA; (c) enter into a contract for a single procurement; or (d) award multiple contracts for a series of upcoming procurements.

The invitation for bids for a multiple stage bidding process shall:

- describe the requirements for, and purpose of, each stage of the process;
- indicate whether the District intends to award a single contract; or multiple contracts for a series of upcoming procurements; and
- state that the first stage is for prequalification only, that a bidder may not submit any pricing information in the first stage of the process; and that bids in the second stage will only be accepted from a person who prequalifies in the first stage.

During the first stage, the District shall prequalify bidders to participate in subsequent stages, in accordance with Policy CBA, shall prohibit the submission of pricing information until the final stage; and may, before beginning the second stage, request additional information to clarify the qualifications of the bidders who submit timely responses.

Contracts may only be awarded for a procurement item described in stage one of the invitation for bids. The District may conduct a bid in as many stages as it determines to be appropriate.

Utah Code § 63G-6a-609 (2013)