

Procurement:

Awarding Contracts by Request for Proposals

Definitions—

- “Design-build” means the procurement of architect-engineer services and construction by the use of a single contract with the design-build provider.
- “Services” means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than a report that is incidental to the required performance. “Services” does not include an employment agreement or a collective bargaining agreement.
- “Professional service” means a service that requires a high degree of specialized knowledge and discretion in the performance of the service, including (a) legal services, (b) consultation services, (c) architectural services, (d) engineering, (e) design, (f) underwriting, (g) bond counsel, (h) financial advice, (i) construction management, (j) medical services, (k) psychiatric services, or (l) counseling services.

Utah Code § 63G-6a-103(15), (35), (43) (2013)

Request for Proposals—

The request for proposals procurement process may be used instead of bidding if the Procurement Officer determines, in writing, that this process will provide the best value to the District. That determination is final and conclusive unless it is arbitrary and capricious or clearly erroneous. The request for proposals procurement process is appropriate to use for the procurement of professional services, a design-build procurement, when cost is not the most important factor to be considered in making the selection that is most advantageous to the District, or when additional factors besides cost are highly significant in making the selection that is most advantageous to the District.

Utah Code § 63G-6a-702 (2013); § 63G-6a-1911(2) (2013)

Request for Proposals Process—

The request for proposals procurement process begins when the District issues 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) (2013)

Content of request

A request for proposals shall:

- state the period of time during which a proposal will be accepted;
- describe the manner in which a proposal shall be submitted;
- state the place where a proposal shall be submitted;
- include, or incorporate by reference, a description of the procurement items sought;
- include, or incorporate by reference, a description of the subjective and objective criteria that will be used to evaluate the proposal;
- include, or incorporate by reference, the standard contractual terms and conditions required by the authorized purchasing entity;
- state the relative weight that will be given to each score awarded for the evaluation criteria, including cost;
- state the formula that will be used to determine the score awarded for the cost of each proposal;
- if the request for proposals will be conducted in multiple stages, as described below, include a description of the stages and the criteria and scoring that will be used to screen offerors at each stage; and
- state that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award, followed by an opportunity to make best and final offers, but that proposals may be accepted without discussions.

Utah Code § 63G-6a-703(2) (2013)

Evaluation criteria

Each proposal shall be evaluated using only the criteria described in the request for proposals. The criteria set forth in the request for proposals may include experience, performance ratings, inspection, testing, quality, workmanship, time, manner, or schedule of delivery, references, financial stability, suitability for a particular purpose, management plans, cost, or other specified subjective or objective criteria.

Utah Code § 63G-6a-707(1), (2) (2013)

Proposal opening and acceptance

The District shall ensure that proposals are opened in a manner that avoids disclosing the contents to competing offerors during the evaluation process. The District may not accept a proposal after the time for submission of a proposal has expired or that is not responsive to the request for proposals.

Utah Code § 63G-6a-704 (2013)

Correction or withdrawal of proposal or cancellation of contract

To the extent allowed by rules issued by the Procurement Policy Board, the Procurement Officer may permit the correction or withdrawal of an unintentionally erroneous proposal or the cancellation of an award or contract that is based on an unintentionally erroneous proposal. A decision to permit the correction or withdrawal of a proposal or the cancellation of an award or a contract shall be supported in a written document, signed by the Procurement Officer.

Utah Code § 63G-6a-706 (2012)

Discussions and best and final offers

After proposals are received and opened, the District may conduct discussions with the offerors and allow them to make best and final offers after those discussions. In so doing, the District shall:

- ensure that each offeror receives fair and equal treatment with respect to the other offerors;
- establish a schedule and procedures for conducting discussions;
- ensure that information in each proposal and information gathered during discussions is not shared with other offerors until the contract is awarded;
- ensure that auction tactics are not used in the discussion process, including discussing and comparing the costs and features of other proposals; and
- set a common date and time for the submission of best and final offers.

If an offeror chooses not to participate in a discussion or does not make a timely best and final offer, the offer submitted by the offerors before the conduct of discussions shall be treated as the offeror's best and final offer.

Utah Code § 63G-6a-705 (2013)

Establishment of evaluation committee

The District shall appoint an evaluation committee consisting of at least three individuals and ensure that the evaluation committee and each member of the evaluation committee (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 for any reason other than conducting the standard procurement process; and (d) conducts the evaluation in a manner that ensures a fair and competitive process and avoids the appearance of impropriety. The evaluation committee may conduct interviews with, or participate in presentations by, the offerors. Except as provided in the following paragraph, 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 evaluation committee submits its final recommended scores on all other criteria to the District.

A “management fee” includes only the following fees of the construction manager/general contractor: (a) preconstruction phase services, (b) monthly supervision fees for the construction phase, and (c) overhead and profit for the construction phase. When selecting a construction manager/general contractor for a construction project, the evaluation committee may, at any time after the opening of the responses to the request for proposals, have access to, and consider, the management fee proposed by the offerors but may not know or have access to any other information relating to the cost of construction submitted by the offerors, until after the evaluation committee submits its final recommended scores on all other criteria to the District. However, the District is not required to limit the information the committee may access for such a proposal if, before opening the responses to the request for proposals, the Board of Education or its designee or a person designated by a rule issued by the Procurement Policy Board 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 limitation requirement and (b) describing the nature of the proposal and the other circumstances relied upon to waive compliance with the limitation, and also makes the written statement available to the public, upon request.

Utah Code § 63G-6a-707(3)-(7) (2013)

Evaluation of proposals

Each proposal shall be evaluated by the evaluation committee using only the criteria described in the request for proposals, awarding scores to each responsive and responsible proposal that has not been disqualified from consideration.

Utah Code § 63G-6a-707(1), (8) (2013)

If the highest score awarded by the evaluation committee, including the score for cost, is awarded to a proposal other than the lowest cost proposal, and the difference between the cost of the highest scored proposal and the lowest cost proposal exceeds the greater of \$10,000 or 5% of the lowest cost proposal, the District shall make an informal written cost-benefit analysis that:

- explains, in general terms, the advantage to the District of awarding the contract to the higher cost offeror;
- includes, except as provided in the next sentence, the estimated added financial value to the District of each criteria that justifies awarding the contract to the higher cost offeror;
- includes, to the extent that assigning a financial value to a particular criteria is not practicable, a statement describing (a) why it is not practicable to assign a financial value to the criteria, and (b) in

nonfinancial terms, the advantage to the District, based on the particular criteria, of awarding the contract to the higher cost offeror;

- demonstrates that the value of the advantage to the District of awarding the contract to the higher cost offeror exceeds the value of the difference between the cost of the higher cost proposal and the cost of the lower cost proposals; and
- includes any other information required by rule issued by the Procurement Policy Board.

If this informal cost-benefit analysis does not justify award of the contract to the offeror that received the highest score, the District may not award the contract to the offeror that received the highest score and may award the contract to the offeror that received the next highest score except when that offeror's proposal also meets the threshold for the informal cost-benefit analysis. In that case, the acceptability of the next highest proposal depends on the cost-benefit analysis justifying acceptance. If the cost-benefit analysis of the second highest proposal does not justify acceptance, then the District may not accept that proposal and must proceed to the third highest proposal, following the same process until the District awards the contract in accordance with this section or cancels the request for proposals. The determinations made in the informal cost-benefit analysis process are final and conclusive unless they are arbitrary and capricious or clearly erroneous.

Utah Code § 63G-6a-708 (2013); § 63G-6a-1911(3) (2013)

Award of contract

After the evaluation and scoring of proposals is complete, and subject to the need to conduct the informal cost-benefit analysis outlined above, the District shall:

- award the contract as soon as practicable to the responsive and responsible offeror with the highest total score, or
- if that offeror is disqualified as provided for below, to the responsive and responsible offeror with the next highest total score, or
- cancel the request for proposals without awarding a contract.

The District's determination to award the contract to an offeror responding to a request for proposals is final and conclusive unless it is arbitrary and capricious or clearly erroneous.

Utah Code § 63G-6a-709(1) (2013); § 63G-6a-1911(4) (2013)

Disqualification or Cancellation

The Board of Education or the district Procurement Officer may disqualify an offeror for (1) violating the District's procurement policies, the Procurement Policy Board rules, or the Procurement Code, (2) violating a requirement of the request for

proposals, (3) unlawful or unethical conduct, or (4), a change in circumstance that, had the change been known at the time the proposal was submitted, would have caused the proposal to not have the highest score. 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 offeror. If the District cancels a request for proposals without awarding a contract, the District shall make available for public inspection a written justification for the cancellation.

Utah Code § 63G-6a-709(2) - (4) (2013)

Publication of award and scores

On the day on which a contract award is announced, the District shall make available to each offeror and to the public a written statement which includes the name of the offeror being awarded the contract that offeror's total score, the total scores awarded to other offerors but without identifying a particular offeror's score, and any cost-benefit analysis which was made.

Utah Code § 63G-6a-709.5 (2013)

Multiple Stage Request for Proposals—

The District may conduct a request for proposals in stages, where an earlier stage is used to qualify offerors for subsequent stages or to narrow the number of offerors that will move on to subsequent stages. A multiple-stage request for proposals shall be conducted according to this policy.

Utah Code § 63G-6a-710 (2013)