

## **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(16), (36), (45) (2014)*

### **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 (2014); § 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) (2014)*

#### *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) (2014)*

#### *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 solvency, suitability for a particular purpose, management plans, cost, or other specified subjective or objective criteria.

*Utah Code § 63G-6a-707(1), (2) (2014)*

#### *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.

*Utah Code § 63G-6a-704(1), (2) (2014)*

### *Rejection of Nonresponsible 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.

*Utah Code § 63G-6a-704(3) (2014)*

### *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)*

### *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 outside the official evaluation committee 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, with the approval of the Board of Education or its designee, conduct interviews with, or attend presentations by, the offerors. 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(3), (4), (5), (8) (2014)*

### *Evaluation of proposals*

The evaluation committee shall determine which proposal provides the best value to the District. Each proposal shall be evaluated and scores awarded as provided in the request for proposals.

*Utah Code § 63G-6a-707(1) (2014)*

At any time during the evaluation process, the evaluation committee, with the approval of the Board of Education or its designee, may request best and final offers from responsible and responsive offerors and evaluate those offers. In so doing, the committee shall (a) ensure that each offeror receives fair and equal treatment with respect to the other offerors, (b) establish a schedule and procedures for conducting discussions, (c) ensure that information in each proposal and information gathered during discussions is not shared with other offerors until the contract is awarded, (d) ensure that auction tactics are not used in the discussion process, including discussing and comparing the costs and features of other proposals, and (e) 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 offeror before the conduct of discussions shall be treated as the offeror's best and final offer.

*Utah Code § 63G-6a-707.5 (2014)*

The District shall, if applicable, assign an individual who is not a member of the evaluation committee to calculate scores for cost based on the applicable scoring formula, weighting, and other scoring procedures contained in the request for proposals. The District shall also (a) review the evaluation committee's scores and correct any errors, scoring inconsistencies, and reported noncompliance with this chapter, (b) add the scores calculated for cost, if applicable, to the evaluation committee's final recommended scores on non-cost criteria to derive the total combined score for each proposal, and (c) provide the evaluation committee the total combined score calculated for each proposal, including any applicable cost formula, weighting, and scoring procedures used to calculate the total combined scores. The evaluation committee may not change its final recommended scores after submitting them to the District or change cost scores calculated by the District.

*Utah Code § 63G-6a-707(5)(b), (c) (2014)*

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. 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. This restriction does not apply if the cost information restriction has been waived as provided for above.

*Utah Code § 63G-6a-707(6) (2014)*

### *Justification Statement and Cost-Benefit Analysis*

In determining which proposal provides the best value to the District, the evaluation committee and the District shall prepare a written justification statement

that (a) explains the score assigned to each evaluation category, (b) explains how the proposal with the highest total combined score provides the best value to the District compared to the other proposals, and (c) if applicable, includes the cost-benefit analysis described below and how that analysis relates to the best value to the District. (The explanation of evaluation category scores is not required to address each criterion within each category.) The determinations made in the justification and informal cost-benefit analysis are final and conclusive unless they are arbitrary and capricious or clearly erroneous.

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 committee and 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 criterion that justifies awarding the contract to the higher cost offeror;
- includes, if assigning a financial value to a particular procurement item or evaluation criterion is not practicable, a written determination to that effect explaining (a) why it is not practicable to assign a financial value and (b) in nonfinancial terms, why awarding the contract to the higher cost offeror provides the best value to the District;
- 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.

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.

Subject to any rules issued by the Procurement Policy Board, the District is not required to make the cost-benefit analysis for a contract with a construction

manager/general contractor if the contract is awarded based solely on the qualifications of the construction manager/general contractor and the management fee.

*Utah Code § 63G-6a-708 (2014); § 63G-6a-1911(3) (2013)*

#### *Award of contract*

After completion of the evaluation and scoring of proposals and the justification statement, including any required cost-benefit analysis, the evaluation committee shall submit the proposals, evaluation scores, and justification statement to the Board of Education or its designee. After reviewing these materials, the Board of Education or its designee 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), (2) (2014); § 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) not being responsive or responsible, (3) violating a requirement of the request for proposals, (4) unlawful or unethical conduct, or (5), 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(3) - (5) (2014)*

#### *Publication of award and scores*

On the next business day after 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 and that offeror's total score, the justification statement (including any cost-benefit analysis), and the total scores awarded to other offerors (but without identifying a particular offeror's score).

The District may use codes or another method to distinguish unsuccessful offerors and to indicate their scores, as long as an offeror cannot be matched with the score awarded to that offeror.

*Utah Code § 63G-6a-709.5 (2014)*

### **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)*