

## **Procurement:**

**CBB**

### ***Awarding Contracts by Bidding***

#### **Bidding is the Usual Standard Procurement Process—**

Bidding is the appropriate procurement process when cost is the major factor.

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. 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 \(2017\)](#)

[Utah Admin. Rules R33-6-101 \(June 21, 2017\)](#)

#### **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, to the extent practicable a full description of the procurement items sought, and the full scope of work, (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 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\(42\) \(2018\)](#)

[Utah Code § 63G-6a-603 \(2017\)](#)

[Utah Admin. Rules R33-6-102\(1\), \(2\) \(June 21, 2017\)](#)

Required product samples must be furnished free of charge unless otherwise specified in the invitation for bids. Samples must be labeled or otherwise identified as specified in the invitation for bids. If not destroyed by testing, samples will be returned upon written request, at the bidder’s expense, within such deadline as may be specified in the invitation for bids.

[Utah Admin. Rules R33-6-102\(2\)\(a\) \(June 21, 2017\)](#)

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\(86\) \(2018\)](#)  
[Utah Code § 63G-6a-111 \(2016\)](#)

*Addenda to invitations*

Prior to the submission of bids, the District may issue addenda, which may modify any aspect of the invitation for bids. Addenda shall be distributed within a reasonable time to allow prospective bidders to consider the addenda in preparing bids.

After the due date and time for submitting bids, at the discretion of the Procurement Officer or Board of Education or its designee, addenda to the invitation for bids may be limited to bidders that have submitted bids, provided the addenda does not make a substantial change to the invitation that, in the opinion of the Procurement Officer or Board of Education or its designee, likely would have impacted the number of bidders responding to the invitation.

[Utah Admin. Rules R33-6-104 \(June 21, 2017\)](#)

*Pre-bid conferences and site visits*

Pre-bid conferences and site visits may be held to explain the procurement requirements as follows:

- (1) Except as authorized in writing by the Procurement Officer or Board of Education or its designee, pre-bid conferences and site visits must require mandatory attendance by all bidders.
- (2) A pre-bid conference may be attended in person, by teleconference, by webinar, or by other electronic media approved by the Procurement Officer or Board of Education or its designee.
- (3) Site visits must be attended in person.
- (4) All pre-bid conferences and site visits must be attended by an authorized representative of the person or vendor submitting a bid and as may be further specified in the procurement documents.
- (5) The solicitation must state that failure to have at least one authorized representative in attendance for the entire duration of each pre-bid conference or site visit shall result in the disqualification of that bidder.
- (6) If the Procurement Officer or Board of Education or its designee in writing waives the mandatory attendance requirement for a pre-bid conference or site visit, the District may use audio or video recordings of pre-bid conferences and site visits and may require all bidders that do not have an authorized representative in attendance for the entire duration of the conference or site visit to review the recording.

If a pre-bid conference or site visit is held, the District shall maintain and publish as an addendum to the solicitation:

- (1) an attendance log including the name of each attendee, the entity the attendee is representing, and the attendee's contact information;
- (2) minutes of the pre-bid conference or site visit; and
- (3) copies of any documents distributed by the District to the attendees at the pre-bid conference or site visit.

Any verbal modifications to any solicitation documents made in a pre-bid conference or site visit shall be reduced to writing and shall also be published as an addendum to the solicitation.

[Utah Admin. Rules R33-6-103 \(June 21, 2017\)](#)

*Cancellation of invitation for bids*

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 Admin. Rules R33-9-101 \(June 21, 2017\)](#)

*No bids submitted*

If there is no initial response to an initial invitation for bids, the Procurement Officer or Board of Education or its designee 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 Officer or Board of Education or its designee 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 \(June 21, 2017\)](#)

[Utah Admin. Rules R33-4-109 \(June 21, 2017\)](#)

*Bid submission*

Bids (and modifications to a bid) submitted after the established due date and time will not be accepted for any reason except when the District determines that an error on the part of the District or its employee resulted in the bid (or modification to a bid) not being received by the due date and time.

All bids or modifications to bids received by physical delivery will be date and time stamped by the District. When submitting a bid or modification to a bid by physical delivery (U.S. Mail, courier service, hand-delivery, or other physical means), bidders are solely responsible for meeting the deadline. Delays caused by a delivery service or other physical means will not be considered as an acceptable reason for a bid or modification to a bid being late.

When submitting a bid or modification electronically, bidders must allow sufficient time to complete the online forms and upload documents. The solicitation will end at the closing time posted in the electronic system. If a bidder is in the middle of uploading a bid when the closing time arrives, the system will stop the process and the bid or modification to the bid will not be accepted.

[Utah Admin. Rules R33-6-105 \(June 21, 2017\)](#)

### *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\(5\), \(76\), \(77\) \(2018\)](#)

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 submitted by a bidder who is not 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. A bid that is submitted by a bidder who is not responsible, includes 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 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. 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 \(2016\)](#)

[Utah Admin. Rules R33-6-105\(4\) \(June 21, 2017\)](#)

### *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, as provided in Policy CBA. However, a vendor may not change the total bid price after the bid opening 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 decision to permit such correction or clarification, 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 (2016)

Utah Code § 63G-6a-1911(1) (2013)

Utah Admin. Rules R33-6-106 (February 23, 2016)

### *Withdrawal of bid*

A bidder may voluntarily withdraw a bid at any time before a contract is awarded with respect to the invitation for bids for which the bid was submitted provided the bidder is not engaged in any type of bid rigging, collusion or other anticompetitive practice made unlawful under other applicable law.

Utah Admin. Rules R33-6-106 (June 21, 2017)

### *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 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 Officer or Board of Education or its designee cannot determine the reasonableness of the bid price or cost proposal;
- (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 \(June 21, 2017\)](#)

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)(2017)

*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, the contractor's work site safety program (including any requirement that the contractor imposes on subcontractors for a work site safety program), 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.

Utah Admin. Rules R33-9-202 (June 21, 2017)

The Board of Education or the Procurement Officer may reject a bid for (1) the bidder's violation of the District's procurement policies, the Procurement Policy Board rules, or the Procurement Code, (2) violating a requirement of the invitation for bids, (3) the bidder's unlawful or unethical conduct, or (4) a change in the bidder's circumstance that, had the change been known at the time the bid was submitted, would have caused the bid to be rejected. Upon rejection, the Board of Education or the Procurement Officer shall make a written finding stating the reasons for rejection and provide a copy of that finding to the bidder who submitted

the rejected bid. 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(4), (5) (2017)*

Any bid that fails to conform to the essential requirements of the invitation for bids shall be rejected. Any bid that does not conform to the applicable specifications shall be rejected unless the invitation for bids authorized the submission of alternate bids and the procurement item(s) offered as alternates meet the requirements specified in the solicitation. Any bid that fails to conform to the delivery schedule or permissible alternates stated in the invitation for bids shall be rejected.

A bid shall be rejected when the bidder imposes conditions or takes exceptions that would modify requirements or terms and conditions of the invitation for bids or limit the bidder's liability to the procurement, since to allow the bidder to impose such conditions or take exceptions would be prejudicial to other bidders. For example, bids shall be rejected in which the bidder:

- (1) for commodities, protects against future changes in conditions, such as increased costs, if total possible costs to the District cannot be determined;
- (2) fails to state a price and indicates that price shall be the price in effect at time of delivery or states a price but qualifies it as being subject to price in effect at time of delivery;
- (3) when not authorized by the invitation for bids, conditions or qualifies a bid by stipulating that it is to be considered only if, before date of award, the bidder receives (or does not receive) an award under a separate solicitation;
- (4) requires that the District is to determine that the bidder's product meets applicable specifications; or
- (5) limits rights of the District under any contract clause.

A bidder may be requested to delete objectionable conditions from a bid provided doing so is not prejudicial to other bidders, or the conditions do not go to the substance, as distinguished from the form, of the bid. A condition goes to the substance of a bid where it affects price, quantity, quality, or delivery of the procurement item(s) offered.

*Utah Admin. Rules R33-9-202 (June 21, 2017)*

Bid cost evaluation shall be based on the lowest bid for the entire term of the contract, excluding renewal periods. Unless an exception is authorized in writing by the Procurement Officer or Board of Education or its designee, cost may not be divided or evaluated on any other basis than the entire term of the contract, excluding renewal periods.

*Utah Admin. Rules R33-6-101(3)(b), (c) (June 21, 2017)*

All bids must be based upon a definite calculated price. "Indefinite quantity contract" means a fixed price contract for an indefinite amount of procurement items to be supplied as ordered by the District, and does not require a minimum purchase

amount, or provide a maximum purchase limit. "Definite quantity contract" means a fixed price contract that provides for the supply of a specified amount of goods over a specified period, with deliveries scheduled according to a specified schedule. Bids may not be based on another bidder's price, including a percentage discount or formula, other amount related to another

bidder's price, or conditions related to another bid or acceptance of an entire bid or a portion of a bid.

[Utah Admin. Rules R33-6-102\(5\) \(June 21, 2017\)](#)

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 Officer or Board of Education or its designee will only accept the bidder's primary bid and will not accept any other bids constituting multiple or alternate bids.

[Utah Admin. Rules R33-6-110 \(June 21, 2017\)](#)

Any bid may be rejected if the Procurement Officer or Board of Education or its designee determines in writing that it is unreasonable as to price. Unreasonableness of price includes not only the total price of the bid, but the prices for individual line items as well.

Any bid may be rejected if the prices for any line items or subline items are materially unbalanced. Unbalanced pricing may increase performance risk and could result in payment of unreasonably high prices. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more line items is significantly over or understated as indicated by the application of cost or price analysis techniques. The greatest risks associated with unbalanced pricing occur when startup work, mobilization, procurement item sample production or testing are separate line items; base quantities and option quantities are separate line items; or the evaluated price is the aggregate of estimated quantities to be ordered under separate line items of an indefinite-delivery contract.

All bids with separately priced line items or subline items shall be analyzed to determine if the prices are unbalanced. If cost or price analysis techniques indicate that an offer is unbalanced, the District shall (a) consider the risks to the District associated with the unbalanced pricing in determining the competitive range and in making the source selection decision; and (b) consider whether award of the contract will result in paying unreasonably high prices for contract performance.

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\(3\) \(June 21, 2017\)](#)

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 Officer or Board of Education or its designee will only accept the bidder's primary bid and will not accept any other bids constituting multiple or alternate bids.

[Utah Admin. Rules R33-6-110 \(June 21, 2017\)](#)

The District shall:

- subject to procedures for multiple award contracts) award the contract as soon as practicable to the responsible bidder who submits the lowest responsive bid that meets the objective criteria described in the invitation for bids; or

- if that bid is rejected as provided for above, to the responsive bidder who submits the next lowest responsible bid that meets the objective criteria described in the invitation for bids; or
- cancel the invitation for bids without awarding a contract.

Utah Code §63G-6a-606(3) (2017)

If the District encounters administrative difficulties before award but after the deadline for submissions that may delay award beyond the bidders' acceptance periods, the bidders should be requested, before expiration of their bids or offers, to extend in writing the acceptance period (with consent of sureties, if any) in order to avoid the need for cancellation.

Utah Admin. Rules R33-9-104 (June 21, 2017)

The District may reject any or all bids, in whole or in part, as may be specified in the invitation for bids, when it is in the best interest of the District. In the event of a rejection of any or all bids, in whole or in part, the reasons for rejection shall be made part of the procurement file and shall be available for public inspection.

Utah Admin. Rules R33-9-201 (June 21, 2017)

#### Re-solicitation

Re-solicitation of a bid may occur only if the Procurement Officer 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 (June 21, 2017)

#### Single bidder

If only one responsive bid is received from a responsible bidder in response to an invitation for bids, including multiple stage bidding, an award may be made to the single bidder if the requirements set forth in Policy CBA are satisfied. Otherwise, the bid may be rejected and:

- (1) a new invitation for bids solicited; or
- (2) the procurement canceled.

[Utah Admin. Rules R33-6-109 \(June 21, 2017\)](#)

[Utah Admin. Rules R33-12-603 \(June 21, 2017\)](#)

[Utah Admin. Rules R33-12-604 \(June 21, 2017\)](#)

#### 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 § 53G-4-303 \(2018\)](#)  
[Utah Code § 63G-6a-607 \(2017\)](#)

#### 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 contract shall be awarded to the procurement item offered by a Utah resident bidder, provided the bidder indicated on the bid form that it is a Utah resident. If none of the tie bids was from an identified Utah resident bidder, the preferred method to resolve the tie shall be for the President of the Board of Education or another designee of the Board to toss a coin before at least three witnesses, with the bidder first in alphabetical order being “heads.” As deemed appropriate by the Procurement Officer or Board of Education or its designee, the Procurement Officer may resolve a tie bid in accordance with one of the following methods: (1) awarding the bid 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.

[Utah Code § 63G-6a-103\(92\) \(2018\)](#)  
[Utah Code § 63G-6a-608 \(2017\)](#)  
[Utah Admin. Rules R33-6-111 \(June 21, 2017\)](#)

#### Resolution of tie bids

##### *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 (June 21, 2017)

##### *Errors discovered after contract award*

Errors discovered after the award of a contract may only be corrected if, after consultation with the Procurement Officer or Board of Education or its designee and legal counsel, it is determined that the correction of the mistake does not violate the requirements of the Utah Procurement Code or the Utah Administrative Rules regarding procurement. Any such correction must be supported by a written determination signed by the Procurement Officer or Board of Education or its designee.

Utah Admin. Rules R33-6-107 (June 21, 2017)

### **Multiple Stage Bidding—**

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 use as many stages as it determines to be appropriate.

Utah Code § 63G-6a-609 (2016)

- The District may hold a pre-bid conference (as outlined above) to discuss the multiple-stage bidding process.  
[Utah Admin. Rules R33-6-113 \(June 21, 2017\)](#)