

Procurement:

CBD

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 labor, effort, or work to produce a result that is beneficial to a procurement unit and includes a professional service. “Services” does not include labor, effort, or work provided under an employment agreement or a collective bargaining agreement.
- “Professional service” means labor, effort, work that requires an elevated degree of specialized knowledge and discretion, including labor, effort, or work in the field of (a) accounting, (b) architecture, (c) construction design and management, (d) engineering, (e) financial services (f) information technology, (g) law, (h) medicine (i) psychiatry, (j) underwriting, or (k) administrative law judge service.

Utah Code § 63G-6a-103(27), (63), (80) (2016)

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)

Utah Code § 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) (2016)

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 best and final offers may be allowed, as provided by law and this policy, from responsible offerors who submit responsive proposals that meet minimum qualifications, evaluation criteria, or applicable score thresholds identified in the request for proposals..

Utah Code § 63G-6a-703(2)(h) (2016)

Utah Admin. Rules R33-7-102(1) (August 7, 2015)

Utah Admin. Rules R33-7-103 (August 7, 2015)

Addenda to a request for proposals may be made for the purpose of making changes to:

- (1) the scope of work;
- (2) the schedule;
- (3) the qualification requirements;
- (4) the criteria;
- (5) the weighting; or
- (6) other requirements of the request for proposals.

Addenda shall be published within a reasonable time prior to the deadline that proposals are due, to allow prospective offerors to consider the addenda in preparing proposals. Publication at least 5 calendar days prior to the deadline that proposals are due shall be deemed a reasonable time. Minor addenda and urgent circumstances may require a shorter period of time.

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

Utah Admin. Rules R33-7-301 (January 28, 2015)

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, the presence and quality of a work site safety program (including any requirement that the offeror imposes on subcontractors for a work site safety program), cost, or other specified subjective or objective criteria.

Utah Code § 63G-6a-707(1), (2) (2016)

Minimum score thresholds must be set forth in the request for proposals and clearly describe the minimum score threshold that proposals must achieve in order to advance to the next stage in the process or to be awarded a contract. Such thresholds may be based on (a) minimum scores for each evaluation category, (b) the total of each minimum score in each evaluation category based on the total points available, or (c) a combination of (a) and (b). Thresholds may not be based on a natural break in scores that was not defined and set forth in the request for proposals or on a predetermined number of offerors.

[*Utah Admin. Rules R33-7-501a \(August 7, 2015\)*](#)

Exceptions to terms and conditions

Offerors requesting exceptions and/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 and/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 and/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 and/or additions with offerors, beginning in order with the offeror submitting the fewest exceptions and/or additions to the offeror submitting the greatest number of exceptions and/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 \(August 7, 2015\)](#)

Submission of confidential information

The following are protected records and may be redacted by the vendor subject to the procedures described below in accordance with the Governmental Records Access and Management Act (GRAMA), Title 63G, Chapter 2 of the Utah Code: (a) trade secrets, as defined in [Utah Code § 13-24-2](#); (b) commercial information or non-individual financial information (subject to the provisions of [Utah Code § 63G-2-305\(2\)](#)); and (c) other protected records under GRAMA.

Any person requesting that a record be protected shall include with the proposal or submitted document:

- (1) a written indication of which provisions of the proposal or submitted document are claimed to be considered for business confidentiality or protected (including trade secrets or other reasons for non-disclosure under GRAMA); and
- (2) a concise statement of the reasons supporting each claimed provision of business confidentiality or protected status.

[Utah Admin. Rules R33-7-105 \(August 7, 2015\)](#)

A person who complies with the above requirements shall be notified by the District prior to the public release of any information for which a claim of confidentiality has been asserted.

Except as provided by court order, when the District or the State Records Committee has determined that disclosure is required for a record requested under GRAMA which is subject to a claim of business confidentiality, the District may not disclose that record until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal, is reached. This limitation does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the State Records Committee. To the extent allowed by law, the parties to a dispute regarding the release of a record may agree in writing to an alternative dispute resolution process.

Any allowed disclosure of public records submitted in the request for proposal process will be made only after the selection of the successful offeror(s) has been made public as required by law.

[Utah Admin. Rules R33-7-106 \(August 7, 2015\)](#)

Process for submission of protected information

If an offeror submits a proposal that contains information claimed to be business confidential or protected information, the offeror must submit two separate proposals:

- (1) One redacted version for public release, with all protected business confidential information either blacked-out or removed, clearly marked as "Redacted Version"; and
- (2) One non-redacted version for evaluation purposes clearly marked as "Protected Business Confidential."

Pricing may not be classified as business confidential and will be considered public information.

An entire proposal may not be designated as "PROTECTED", "CONFIDENTIAL" or "PROPRIETARY" and shall be considered non-responsive unless the offeror removes the designation.

[Utah Admin. Rules R33-7-107 \(August 7, 2015\)](#)

Pre-proposal conferences or site visits

Pre-proposal 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-proposal conferences and site visits must require mandatory attendance by all offerors.
- (2) A pre-proposal 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-proposal conferences and site visits must be attended by an authorized representative of the person or vendor submitting a proposal and as may be further specified in the procurement documents.
- (5) The request for proposals must state that failure to have at least one authorized representative in attendance for the entire duration of each pre-proposal conference or site visit shall result in the disqualification of that offeror.
- (6) If the Procurement Officer or Board of Education or its designee in writing waives the mandatory attendance requirement for a pre-proposal conference or site visit, the District may use audio or video recordings of pre-proposal conferences and site visits and may require all offerors 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-proposal 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-proposal conference or site visit; and
- (3) copies of any documents distributed by the District to the attendees at the pre-proposal conference or site visit.

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

[Utah Admin. Rules R33-7-201 \(August 7, 2015\)](#)

Cancellation of request for proposals

A request for proposals may be canceled by the District prior to the deadline for submission of proposals when the District determines it is in its 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 \(July 8, 2014\)](#)

No proposals submitted

If there is no initial response to an initial request for proposals, 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 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 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).

[Utah Admin. Rules R33-9-102 \(July 8, 2014\)](#)

Proposal submission

Proposals (and modifications to proposals) 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 proposal (or modification to a proposal) not being received by the due date and time.

All proposals or modifications to proposals received by physical delivery will be date and time stamped by the District. When submitting a proposal or modification to a proposal by physical delivery (U.S. Mail, courier service, hand-delivery, or other physical means), offerors 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 proposal or modification to a proposal being late.

When submitting a proposal or modification electronically, offerors 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 an offeror is in the middle of uploading a proposal when the closing time arrives, the system will stop the process and the proposal or modification to the proposal will not be accepted.

[Utah Admin. Rules R33-7-402 \(August 7, 2015\)](#)

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. An offeror may withdraw or modify a proposal prior to the due date for submission of proposals. The District shall accept a proposal after the due date for submission if the District determines that an error on the part of the District or its employee resulted in the proposal (or modification to a proposal) not being received by the due date and time.

[Utah Code § 63G-6a-704\(1\), \(2\) \(2014\)](#)

[Utah Admin. Rules R33-7-401 \(August 7, 2015\)](#)

[Utah Admin. Rules R33-7-402\(4\) \(August 7, 2015\)](#)

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.

[Utah Code § 63G-6a-704\(3\) \(2014\)](#)

Cancellation before award

When the District determines before award but after opening that the specifications, scope of work or other requirements contained in the request for proposal documents were not met by any offeror the request for proposals shall be cancelled.

In addition, the District may cancel a request for proposals before award but after opening all proposals when the District determines in writing that one or more of the following has occurred:

- (1) inadequate or ambiguous specifications were cited in the request for proposals;
- (2) the request specifications have been or must be revised;
- (3) the procurement item(s) being solicited are no longer required;
- (4) 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;
- (5) 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;

- (6) 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 Officer or Board of Education or its designee cannot determine the reasonableness of the price or cost proposal;
- (7) the responses to the request for proposals were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or,
- (8) no responsive proposal has been received from a responsible offeror.

[Utah Admin. Rules R33-9-103 \(July 8, 2014\)](#)

If the District has an existing contract and a request for proposals is cancelled for one of the reasons listed in paragraphs (6), (7), or (8) above, and the Procurement Officer or Board of Education or its designee has made the required written determination, the District may permit the extension of the existing contract as permitted in Policy CBF.

[Utah Admin. Rules R33-9-105 \(July 8, 2014\)](#)

[Utah Code § 63G-6a-802.7 \(2016\)](#)

Correction or clarification of proposal or cancellation of contract

The Board of Education or its designee may allow a vendor to correct an immaterial error in a proposal, as provided in Policy CBA and may also request a vendor to clarify information contained 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.)

[Utah Code § 63G-6a-706 \(2016\)](#)

[Utah Admin. Rules R33-7-403 \(August 7, 2015\)](#)

In the event an offeror submits a proposal that on its face appears to be impractical, unrealistic or otherwise in error, the Procurement Officer or Board of Education or its designee may contact the offeror to either confirm the proposal, permit a correction of the proposal, or permit the withdrawal of the proposal, in accordance with the prior paragraph.

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.

[Utah Admin. Rules R33-7-502 \(August 7, 2015\)](#)

If the District encounters administrative difficulties before award but after the deadline for submissions that may delay award beyond the offerors' acceptance periods, the offerors should be requested, before expiration of their 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 \(July 8, 2014\)](#)

The District may reject any or all proposals, in whole or in part, as may be specified in the request for proposals, when it is in the best interest of the District. In the event of a rejection of any or all proposals, 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 \(July 8, 2014\)](#)

Establishment of evaluation committee

The District shall appoint an evaluation committee consisting of at least three individuals with 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 who is not a member of the committee and who does not participate in evaluation scoring. The evaluation committee may, with the approval of the Board of Education or its designee and as outlined in the request for proposals, conduct interviews with, or attend presentations by, the offerors for the purpose of clarifying information contained in proposals. However, in such interactions, an offeror may only explain, illustrate, or interpret the contents of the original proposal. The offeror may not (1) address criteria or specifications not contained in the original proposal, (2) correct any deficiency, inaccuracy, or mistake other than an immaterial error, (3) remedy an incomplete submission of documents, (4) remedy an untimely proposal submission, (5) substitute or alter a required form, (6) remedy a cause for the offeror being considered not responsible or the proposal not responsive, or (7) correct a failure to meet mandatory minimum requirements, evaluation criteria, or score thresholds. 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\(3\), \(4\), \(5\), \(6\), \(9\) \(2016\)](#)

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\(1\) \(August 7, 2015\)](#)

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

A proposal shall be rejected when the offeror imposes conditions or takes exceptions that would modify requirements or terms and conditions of the request for proposals or limit the offeror's liability to the procurement, since to allow the offeror to impose such conditions or take exceptions would be prejudicial to other offerors. For example, proposals shall be rejected in which the offeror:

- (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 request for proposals, conditions or qualifies a proposal by stipulating that it is to be considered only if, before date of award, the offeror receives (or does not receive) an award under a separate solicitation;
- (4) requires that the District is to determine that the offeror's product meets applicable specifications; or
- (5) limits rights of the District under any contract clause.

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

[Utah Admin. Rules R33-9-202 \(July 8, 2014\)](#)

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\(4\) \(July 8, 2014\)](#)

Evaluation procedure

The evaluation committee shall evaluate each proposal from a responsible offeror which is responsive and 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 criteria and as provided in the request for proposals.

[Utah Code § 63G-6a-707\(1\) \(2016\)](#)

[Utah Admin. Rules R33-7-703\(2\) \(August 7, 2015\)](#)

Prior to the scoring of proposals, a District procurement officer will meet with the evaluation committee and any staff that will have access to the proposals to:

- (1) discuss the evaluation and scoring process to ensure that each committee member has a clear understanding of the scoring process and how points will be assigned;
- (2) discuss requirements regarding conflicts of interests, the appearance of impropriety, and the importance of confidentiality;
- (3) discuss 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 and any staff that will have access to the proposals.

Once the proposals have been received and it is clear which offerors are involved in 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 as set forth in [Utah Code § 63G-6a-707](#) and [Administrative Rule R33-24-107](#)

Unless an exception is authorized by the Board of Education or its designee, in order to avoid cost influencing the evaluation committee's scoring of non-price criteria, in accordance with [Utah Code § 63G-6a-707](#), costs may not be revealed to the evaluation committee until after the committee has finalized its scoring on all other technical non-price criteria in the request for proposals.

After receipt of proposals, each committee member shall independently, as described below, read and score each proposal based on the technical non-price criteria set forth in the request for proposals to assess the completeness, quality, and desirability of each proposal. Proposals must be evaluated solely on the stated criteria listed in the request for proposals. Past performance ratings and references may be considered if listed as evaluation criteria in the request for proposals. Personal bias based on prior experience with a procurement item or the offeror cannot be considered in scoring proposals, except as provided in the request for proposals. Personal

favoritism for a vendor or bias against a vendor cannot be considered in scoring proposals. However, the prohibition against consideration of personal bias or favoritism does not prevent a committee member from having a bias based on their review of a proposal in regard to the criteria in the solicitation. As provided for above, committee members may with District approval receive assistance with technical issues.

After the proposals have been evaluated and scored by individual committee members, the entire committee shall meet to discuss the proposals, if applicable conduct interviews, resolve any factual disagreements, and arrive at the final scoring. During committee discussions, each member may change their initial scoring. If additional information or clarification is needed from an offeror, the committee may, as described above, request information or clarification from an offeror. Such request will only be approved if it can be done in a manner that is fair to all offerors.

All committee members must be present to take any official action. If a committee member does not attend an evaluation committee meeting, the member shall be removed from the evaluation committee and the remainder of the committee may proceed with the evaluation, provided there are at least three evaluation committee members remaining.

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-708](#) and [Administrative Rule R33-7-601](#), as described below.

Each evaluation committee member shall turn in a completed scoring sheet, signed and dated by the evaluation committee member.

The evaluation committee may tally the final scores for criteria other than cost to arrive at a consensus score by either (a) the total of all of the points given by individual committee members, or (b) the average of the individual scores.

The evaluation committee shall submit its final recommended scores for all criteria other than cost to the District, which shall follow the procedure set out below for reviewing the committee's scores and for applying the scoring formula and calculating the total combined score.

The evaluation committee and the District shall prepare the cost justification statement and any applicable cost-benefit analysis in accordance with [Utah Code 63G-6a-708](#).

The District's role as a non-voting member of the evaluation committee will be to facilitate the evaluation process within the guidelines of the Utah procurement code and administrative rule.

The District may replace any member on the committee or reconstitute the committee in any way it deems appropriate to cure any impropriety. If the impropriety

cannot be cured by replacing a member, then a new committee may be appointed or the procurement cancelled.

[Utah Admin. Rules R33-7-703 \(August 7, 2015\)](#)

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 a one through five point scoring system. Points shall be awarded to each applicable evaluation category as set forth in the request for proposals, including but not limited to:

- (1) Technical specifications;
- (2) Qualifications and experience;
- (3) Programming;
- (4) Design;
- (5) Time, manner, or schedule of delivery;
- (6) Quality or suitability for a particular purpose;
- (7) Financial solvency;
- (8) Management and methodological plan; and
- (9) Other requirements specified in the request for proposals.

Scoring Methodology:

- (1) Five points (Excellent): The proposal addresses and exceeds all of the requirements described in the request for proposals;
- (2) Four points (Very Good): The proposal addresses all of the requirements described in the request for proposals and, in some respects, exceeds them;
- (3) Three points (Good): The proposal addresses all of the requirements described in the request for proposals in a satisfactory manner;
- (4) Two points (Fair): The proposal addresses the requirements described in the request for proposals in an unsatisfactory manner; or
- (5) One point (Poor): The proposal fails to address the requirements described in the request for proposals or it addresses the requirements inaccurately or poorly

[Utah Admin. Rules R33-7-704 \(August 7, 2015\)](#)

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 their 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 \(August 7, 2015\)](#)

Interviews and presentations

Interviews and presentations may be held as outlined in the request for proposals. Offerors invited to interviews or presentations shall be limited to those offerors meeting minimum requirements specified in the request for proposals. Representations made by the offeror during interviews or presentations shall become an addendum to the offeror's proposal and shall be documented. Representations must be consistent with the offeror's original proposal and may only be used for purposes of clarifying or filling in gaps in the offeror's proposal. The Procurement Officer shall establish a date and time for the interviews or presentations and shall notify eligible offerors of the procedures. Interviews and presentations will be at the offeror's expense.

[Utah Admin. Rules R33-7-503 \(August 7, 2015\)](#)

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. At any time during the evaluation process, the evaluation committee, with the approval of the Board of Education or its designee, 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. The evaluation committee may request best and final offers if:

- (1) no single proposal addresses all the specifications;
- (2) all or a significant number of the proposals received are ambiguous on a material point and the evaluation committee requires further clarification in order to fairly evaluate the proposals;

- (3) additional information is needed from all offerors in order for the evaluation committee to complete the evaluation of the proposals;
- (4) the differences between proposals in one or more material aspects are too slight to allow the evaluation committee to distinguish between proposals;
- (5) all cost proposals are too high or over the budget; or
- (6) for other reason as provided in regulations of the Utah Procurement Policy Board.

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. When a request for best and final offers is issued to reduce cost proposals, offerors shall submit itemize cost proposals clearly indicating the tasks or scope reductions that can be accomplished to bring costs within the available budget. The cost information of one offeror may not be disclosed to competing offerors during the best and final offers process and further, such cost information shall not be shared with other offerors until the contract is awarded.

The District shall ensure that auction tactics are not used in the discussion process, including discussing and comparing the costs and features of other proposals. The best and final offers process may not be conducted as part of the contract negotiation process. It may only be conducted during the evaluation phase of the request for proposals process. The District may not use the best and final offers process to allow offerors a second opportunity to respond to the entire request for proposals. If a proposal modification is made orally during the interview or presentation process, the modification must be confirmed in writing.

A request for best and final offers shall be made in compliance with the public notice requirements set forth in Policy CBA, shall include a submission deadline that allows offerors a reasonable opportunity to prepare and submit responses, and shall indicate how proposal modifications submitted in response to the request will be evaluated. Only offerors meeting the minimum qualifications or scores described in the request for proposals are eligible to respond to a request for best and final offers. Unsolicited best and final offers will not be accepted by the District. 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 \(2016\)](#)

[Utah Admin. Rules R33-7-601 \(August 7, 2015\)](#)

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\(5\)\(b\), \(c\) \(2016\)](#)

Any proposal 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 proposal, but the prices for individual line items as well.

Any proposal 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 proposals 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.

A proposal may be rejected if the District and the Procurement Officer or Board of Education or its designee determine that the lack of balance poses an unacceptable risk to the District.

[Utah Admin. Rules R33-9-203 \(July 8, 2014\)](#)

When selecting a construction manager/general contractor for a construction project, the evaluation committee may score a construction manager / general contractor based upon criteria contained in the solicitation, including qualifications, performance ratings, references, management plan, certifications, and other project specific criteria described in the solicitation. The committee may also, as described in the solicitation, weight and score the management fee as a fixed rate or as a fixed percentage of the estimated contract value. The 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. (This restriction does not apply if it has been properly waived as set forth above under “Establishment of evaluation committee”.) 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\(7\), \(9\) \(2016\)](#)

[Utah Admin. Rules R33-13-205\(3\) \(July 8, 2014\)](#)

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.) This cost-benefit analysis shall be based on the entire term of the contract, excluding any renewal periods. 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.

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 if the following requirements are satisfied:

- (1) a competitive process is maintained by the issuance of a request for proposals that requires the offeror to provide, at a minimum:
 - a. a management plan;
 - b. references;
 - c. statements of qualifications; and
 - d. a management fee.
- (2) the management fee contains only the following:
 - a. preconstruction phase services;
 - b. monthly supervision fees for the construction phase; and
 - c. overhead and profit for the construction phase.
- (3) the evaluation committee may, as described in the solicitation, weight and score the management fee as a fixed rate or a fixed percentage of the estimated contract value.
- (4) the contract awarded must be in the best interest of the District.

[Utah Code § 63G-6a-708 \(2016\)](#)

[Utah Code § 63G-6a-1911\(3\) \(2013\)](#)

[Utah Admin. Rules R33-7-701a \(August 7, 2015\)](#)

[Utah Admin. Rules R33-7-701 \(August 7, 2015\)](#)

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 responsible offeror with responsive proposal receiving the highest total score, or
- if that proposal is rejected as provided for below, to the responsible offeror with the responsive proposal receiving the next highest total score, or

- repeat that process, moving to the next highest scored proposal until the contract is awarded to a responsible offeror who submitted a proposal which was not rejected; 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\(1\), \(2\) \(2016\)](#)

[Utah Code § 63G-6a-1911\(4\) \(2013\)](#)

If only one proposal is received in response to a request for proposals, the evaluation committee may conduct a review to determine if the proposal meets the minimum requirements, pricing and terms are reasonable, and the proposal is in the best interest of the District. If the committee determines that all of these requirements are satisfied, the District may make the award. If an award is not made, the District may either cancel the procurement or resolicit for the purpose of obtaining additional proposals.

[Utah Admin. Rules R33-7-702 \(August 7, 2015\)](#)

Rejection of Proposal

The Board of Education or the Procurement Officer may reject a proposal if the offeror (1) is not responsible, (2) is in violation of the Procurement Code, (3) has engaged in unethical conduct, or (4) fails to sign a contract (a) within the time specified in the request for proposals, or (b) 90 days after the contract award, or (c) the time period specified in writing by the Board of Education. A proposal may also be rejected if there is a change in the offeror's circumstances that, if known when the offer was evaluated, would have caused the offer to not receive the highest score. A proposal may also be rejected if it is not responsive or does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds stated in the request for proposals. Upon rejection of a proposal, 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 offeror whose proposal was rejected. 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\(3\) - \(5\) \(2016\)](#)

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 \(2014\)](#)

With respect to a request for proposals process, the following shall be disclosed by the District after receipt of a GRAMA request and payment of any lawfully enacted and applicable fees:

- (1) the contract(s) entered into as a result of the selection and the successful proposal(s), except for those portions that are to be non-disclosed as provided for above under "Submission of confidential information";
- (2) the unsuccessful proposals, except for those portions that are to be non-disclosed as provided for above under "Submission of confidential information";
- (3) the rankings of the proposals;
- (4) the names of the members of any selection committee;
- (5) the final scores used by the selection committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores or rankings; and
- (6) the written justification statement supporting the selection, except for those portions that are to be non-disclosed as provided for above under "Submission of confidential information".

The following information will not be disclosed by the District at any time to the public including under any GRAMA request:

- (1) the names of individual scorers/evaluators in relation to their individual scores or rankings;
- (2) any individual scorer's/evaluator's notes, drafts, and working documents;
- (3) non-public financial statements; and
- (4) past performance and reference information, which is not provided by the offeror and which is obtained as a result of the efforts of the District. However, to the extent such past performance or reference information is included in the written justification statement, it is subject to public disclosure.

[Utah Admin. Rules R33-7-802 \(August 7, 2015\)](#)

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 R33-7-403\(3\) \(August 7, 2015\)](#)

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 \(2013\)](#)