



POLICIES AND PROCEDURES

Policy # 021

Subject: Vendors on State Contract Allowed to Match Price When an Agency is Granted an Exception to Conduct Another Procurement for a Procurement Item Already Available On State Contract.

Effective: May 10, 2017

References: UCA 63G-6a-506 and R33-1-2.5

Purpose:

An executive branch procurement unit may not obtain a procurement item through a small purchase standard procurement process if the procurement item can be obtained through a State of Utah “Best Value” Cooperative Contract or a contract awarded by the chief procurement officer under Subsection 63G-6a-2105(1) (collectively “state contracts”).

Policy:

The Division of Purchasing is committed to ensuring that the Executive Branch Agencies that use state contracts receive the best value in their purchases. As such, if an Executive Branch Agency finds a procurement item that is provided by a vendor not on state contract that provides a better value for the procurement item it should contact the Division of Purchasing to determine whether an exception under 63G-6a-506(5) should be granted.

Before an agency is granted an exception by the Division of Purchasing under 63G-6a-506(5) the vendors on state contract shall be given an opportunity to match the price offered by the vendor who is not on state contract.

Justification for allowing vendors on state contract to price match when an exception under 63G-6a-506 is granted includes:

- (1) The vendor not on state contract either:
 - (i) did not respond to the solicitation that the vendor on state contract responded to; or
 - (ii) responded to the solicitation and was rejected; and
- (2) The vendor on state contract was awarded a contract following a standard procurement process, in which the vendor was determined to have met the mandatory minimum requirements and the technical point thresholds described in the solicitation;

- (3) The vendor on state contract has negotiated the terms and conditions with the State of Utah, which meet certain statutory requirements and protections for State of Utah Executive Branch Agencies, including:
 - (i) record retention requirements;
 - (ii) audit obligations by the vendor; or
 - (iii) bid security requirements; and
- (4) The procurement item under state contract is of the quality that has been determined by an evaluation committee to be in the best interest of the State of Utah;
- (5) A determination has been made that no conflicts of interest exist between an employee or officer of an executive branch agency and the vendor on state contract;
- (6) The solicitation for the vendor under state contract was conducted pursuant to the Utah Procurement Code and was fair and equitable to all persons who deal with the procurement system in the State of Utah; and
- (7) Vendors on state contract have published their price and their price is open to public inspection. Fair and equitable procurement practices do not allow one vendor to have access to the pricing of competing vendors prior to submitting their price offer or bidding. In this situation, vendors who are not on state contract have an opportunity to see the price of vendors on state contract prior to submitting their pricing which creates an unfair procurement environment. To level the playing field and create a fair and equitable procurement environment, vendors on state contract must be given an opportunity to have access to and match the price of vendors not on state contract.

If the vendor on state contract is able to offer pricing, terms, and specifications that, when compared to the pricing, terms, and specifications available from vendors not on state contract is determined by the chief procurement officer to be in the best interest of the procurement unit, the chief procurement officer shall deny the agency's request for an exception.

If the vendor on state contract is unable to offer pricing, terms, and specifications that, when compared to the pricing, terms, and specifications available from vendors not on state contract is determined by the chief procurement officer to be in the best interest of the procurement unit, the chief procurement officer shall grant the exception.

References:

63G-6a-506 Small purchases.

- (4) Except as provided in Subsection (5), an executive branch procurement unit may not obtain a procurement item through a small purchase standard procurement process if the procurement item may be obtained through a state cooperative contract or a contract awarded by the chief procurement officer under Subsection 63G-6a-2105(1).
- (5) Subsection (4) does not apply if:
 - (b) the chief procurement officer or the head of a procurement unit that is an executive branch procurement unit with independent procurement authority:
 - (i) determines in writing that it is in the best interest of the procurement unit to obtain an individual procurement item outside of the state contract, comparing:
 - (A) the contract terms and conditions applicable to the procurement item under the state contract with the contract terms and conditions applicable to the procurement item if the procurement item is obtained outside of the state contract;

- (B) the maintenance and service applicable to the procurement item under the state contract with the maintenance and service applicable to the procurement item if the procurement item is obtained outside of the state contract;
 - (C) the warranties applicable to the procurement item under the state contract with the warranties applicable to the procurement item if the procurement item is obtained outside of the state contract;
 - (D) the quality of the procurement item under the state contract with the quality of the procurement item if the procurement item is obtained outside of the state contract; and
 - (E) the cost of the procurement item under the state contract with the cost of the procurement item if the procurement item is obtained outside of the state contract;
- (ii) for a procurement item that, if defective in its manufacture, installation, or performance, may result in serious physical injury, death, or substantial property damage, determines in writing that the terms and conditions, relating to liability for injury, death, or property damage, available from the source other than the contractor who holds the state contract, are similar to, or better than, the terms and conditions available under the state contract; and
 - (iii) grants an exception, in writing, to the requirement described in Subsection (4).

R33-1-2.5 Use of Similar Laws and Rules to Establish Precedent or Extrapolate Legal Intent

- (1) When making a determination and a specific law or rule pertaining to the issue does not exist, the chief procurement officer or head of a procurement unit with independent procurement authority may refer to other applicable laws that are similar in nature to the issue to establish a precedent or extrapolation of legal intent to assist in making a determination based on the reasonable person standard set forth in R33-1-1.