

## **R33. Administrative Services, Division of Purchasing and General Services**

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**R33. Administrative Services, Purchasing and General Services.**  
**R33-1. Utah Procurement Rules, "General Procurement Provisions,"**  
**Definitions.**

**R33-1-1. Definitions.**

(A) Terms used in the procurement rules are defined in Sections 63G-6a-103 and 104.

(B) In addition:

- (1) "Actual Costs" means direct and indirect costs which have been incurred for services rendered, supplies delivered, or construction built, as distinguished from allowable costs.
- (2) "Adequate Price" Competition means:
  - (a) when a minimum of two competitive bids, proposals, or quotes are received from responsive bidders or offerors.
- (3) "Acquiring Agency" is a conducting procurement unit subject to Section 63F-1-205 acquiring new technology or technology as therein defined.
- (4) "Bid Bond" is an insurance agreement, accompanied by a monetary commitment, by which a third party (the Surety) accepts liability and guarantees that the bidder will not withdraw the bid. The bidder will furnish bonds in the required amount and if the contract is awarded to the bonded bidder, the bidder will accept the contract as bid, or else the surety will pay a specific amount.
- (5) "Bid Rigging" means agreement among potential competitors to manipulate the competitive bidding process, for example, by agreeing not to bid, to bid a specific price, to rotate bidding, or to give kickbacks.
- (6) "Bid Security" means the deposit of cash, certified check, cashier's check, bank draft, money order, or bid bond submitted with a bid and serving to guarantee to the owner that the bidder, if awarded the contract, will execute such contract in accordance with the bidding requirements and the contract documents.
- (7) "Brand Name or Equal Specification" means a specification which uses a brand name specification to describe the standard of quality, performance, and other characteristics being solicited, and which invites the submission of equivalent products.
- (8) "Brand Name Specification" means a specification identifying one or more products by manufacturer name, product name, unique product identification number, product description, SKU or catalogue number.
- (9) "Collusion" means when two or more persons act together to achieve a fraudulent or unlawful act. Collusion inhibits free and open competition in violation of law.
- (10) "Cost Analysis" means the evaluation of cost data for the purpose of arriving at estimates of costs to be incurred, prices to be paid, costs to be reimbursed, or costs actually incurred.

- (11) "Cost Data" means factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.
- (12) "Cronyism" is an anticompetitive practice that may violate federal and state antitrust and procurement laws. Cronyism in government contracting is a form of favoritism where contracts are awarded on the basis of friendships, associations or political connections instead of fair and open competition.
- (13) "Include, Includes, or Including" has the same meaning as Section 68-3-12(1)(f). When used in code or rule, "include," "includes," or "including" means that the items listed are not an exclusive list, unless the word "only" or similar language is used to expressly indicate that the list is an exclusive list.
- (14) "Mandatory Requirement" means a condition set out in the specifications/statement of work that must be met without exception.
- (15) "Minor Irregularity" is a variation from the solicitation that does not affect the price of the bid, offer, or contract or does not give a bidder/offeror an advantage or benefit not shared by other bidders/offerors, or does not adversely impact the interests of the procurement unit.
- (16) "New Technology" means any invention, discovery, improvement, or innovation, that was not available to the acquiring agency on the effective date of the contract, whether or not patentable, including, but not limited to, new processes, emerging technology, machines, and improvements to, or new applications of, existing processes, machines, manufactures and software. Also included are new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable and any new process, machine, including software, and improvements to, or new applications of, existing processes, machines, manufactures and software.
- (17) "Participating Addendum" means an agreement issued in conjunction with a Cooperative Contract that authorizes a public entity to use the Cooperative Contract.
- (18) "Payment Bond" is a bond that guarantees payment for labor and materials expended on the contract.
- (19) "Person" means:
  - (a) an individual;
  - (b) an association;
  - (c) an institution;
  - (d) a corporation;
  - (e) a company;
  - (f) a trust;
  - (g) a limited liability company;
  - (h) a partnership;
  - (i) any other organization or entity.

- (20) "Price Analysis" means the evaluation of price data without analysis of the separate cost components and profit.
- (21) "Price Data" means factual information concerning prices for procurement items.
- (22) "Reasonable Person Standard" means an objective test to determine if a reasonably prudent person who exercises an average degree of care, skill, and judgment would be justified in drawing the same conclusions under the same circumstances or having knowledge of the same facts.
- (23) "Section and Subsection" refers to, as applicable, the Utah Code and the Administrative Rule.
- (24) "Service" means labor, effort, or work to produce a result that is beneficial to a procurement unit and includes a:
- (a) Professional service;
  - (b) Management and operation service;
  - (c) Consulting service;
  - (d) Advertising or promotional service;
  - (e) Concession service;
  - (f) Vending service;
  - (g) Management and operation service;
  - (h) Promotional service;
  - (i) Banking service;
  - (j) Credit card service;
  - (k) Electronic benefit transfer (EBT) card service; or
  - (l) Women, infants, and children (WIC) card service.
- (25) "Surety bond" (performance bond) means a promise to pay one the obligee (owner) a certain amount if the principal (contractor) fails to meet some obligation, such as fulfilling the terms of a contract. The surety bond protects the obligee (owner) against losses resulting from the principal's failure to meet the obligation. In the event that the obligations are not met, the obligee (owner), will recover its losses via the bond.
- (26) "Steering a Contract to a Favored Vendor" is defined as a person involved in the procurement process, including any phase of the procurement process, who inappropriately acts with bias or prejudice in violation of the law to favor one vendor over another vendor(s) in awarding a government contract.
- (a) Steering a contract to a favored vendor includes:
- (i) Taking part in collusion or manipulation of the procurement process;
  - (ii) Accepting any form of illegal gratuity, bribe or kickback paid by a vendor in exchange for a contract award;
  - (iii) Awarding a contract without engaging in a standard procurement process to a vendor without proper justification;

- (iv) Involvement in a bid rigging scheme;
- (v) Writing specifications that are overly restrictive, beyond the reasonable needs of the procurement unit, or in a way that gives an unfair advantage to a particular vendor without proper justification;
- (vi) Intentionally dividing a purchase to avoid engaging in a standard competitive procurement process as set forth in Section 63G-6a-506(8);
- (vii) Leaking bid, proposal, or other information to a particular vendor that is prejudicial to other vendors;
- (viii) Improperly avoiding engaging in a standard procurement process in order to extend the duration of a vendor's existing contract through means of a contract extension; or
- (ix) Participating in the procurement process while having a financial conflict of interest as set forth in Section R33-24-105.

(27) "Technology" means any type of technology defined in Section 63F-1-102(8).

### **R33-1-2. Applicability of Rules.**

(1) Title R33 shall apply to:

- (a) A procurement unit for which the Utah State Procurement Policy Board is identified in Section 63G-6a-103(3) as the applicable rulemaking authority, except to the extent the procurement unit has adopted its own administrative rules as authorized under Section 63G-6a-103(3); and
- (b) A procurement unit with independent procurement authority or a procurement unit for which the Utah State Procurement Policy Board is not identified in Section 63G-6a-103(3) as the applicable rulemaking authority, and the procurement unit has adopted Title R33 or, to the extent, a portion of Title R33 by rule, ordinance, policy, or other authorized means.

### **R33-1-3. Determinations by Chief Procurement Officer or Head of a Procurement Unit with Independent Procurement Authority.**

- (1) Unless specifically stated otherwise, all determinations under Utah Procurement Code and Title R33 shall be made by the chief procurement officer or head of a procurement unit with independent procurement authority.
- (2) Determinations by the chief procurement officer or head of a procurement unit with independent procurement authority shall be made:
  - (a) In accordance with the provisions set forth in Sections 63G-6a-106 and 303 and other rules and laws if applicable; or
  - (b) By applying the reasonable person standard to determine:

- (i) If the actions of a person involved in the procurement process would cause a reasonable person to conclude that the person has acted in violation of the Utah Procurement Code or Title R33;
- (ii) If the circumstances surrounding a procurement would cause a reasonable person to conclude that a violation of the Utah Procurement Code or Title R33 has occurred; or
- (iii) If the evidence presented would cause a reasonable person to conclude that certain facts associated with a procurement are true.

**R33-1-4. Competitive Procurement Required for Expenditure of Public Funds or Use of Public Property or Other Public Assets to Acquire a Procurement Item Unless Exception is Authorized.**

- (1) Unless the chief procurement officer or head of a procurement unit with independent procurement authority issues a written exception in accordance with provisions set forth in the Utah Procurement Code and applicable Rules documenting why a competitive procurement process is not required and why it is in the best interest of the procurement unit to award a contract without engaging in a standard procurement process, a procurement unit shall conduct a standard procurement process whenever:
  - (a) Public funds are expended or used to acquire a procurement item; or
  - (b) A procurement unit's property, name, influence, assets, resources, programs, or other things of value is used as consideration in the formation of a contract for a procurement item.

**R33-1-12. Mandatory Minimum Requirements in a Solicitation.**

- (1) Mandatory minimum requirements may be used in a solicitation to assist the conducting procurement unit in identifying the most qualified persons responding to a solicitation and to limit the number of persons eligible to move forward to subsequent stages in the solicitation or evaluation process. Examples of mandatory minimum requirements include:
  - (a) Ability to meet delivery deadlines;
  - (b) Qualifications;
  - (c) Certifications;
  - (d) Licensing;
  - (e) Experience;
  - (f) Compliance with State or Federal regulations;
  - (g) Type of services provided; or
  - (i) Availability of product, equipment, supplies, or services.

**KEY: government purchasing, Utah procurement rules, general procurement provisions, definitions**

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**Authorizing, and Implemented or Interpreted Law: 63G-6a**

## **R33. Administrative Services, Purchasing and General Services.**

### **R33-2. Rules of Procedure for Procurement Policy Board.**

#### **R33-2-1. Purpose.**

The purpose of this Rule R33-2 is to establish procedures for the meetings of the Procurement Policy Board. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

#### **R33-2-2. Authority.**

This Rule R33-2 is authorized under Subsection 63G-6a-202(5) which directs that the Procurement Policy Board "adopt rules of procedure for conducting its business." The Procurement Policy Board is also authorized to make rules under Section 63G-6a-203 et. seq.

#### **R33-2-3. Definitions.**

All definitions in the Utah Procurement Code, Title 63G, Chapter 6a, Utah Code, shall apply to this Rule R33-2. In addition the following definitions shall apply to this Rule R33-2:

- (1) "Attendance" means a person attending a Board meeting, either in person or through electronic means as authorized by this Rule.
- (2) "Board" means the Procurement Policy Board established under Section 63G-6a-202.
- (3) "Chair" means the person elected as Chair of the Board pursuant to Subsection 63G-6a-202(5)(a)(ii).
- (4) "Chief Procurement Officer" means the Chief Procurement Officer as defined in the Utah Procurement Code.
- (5) "Director" means the Director of the Division of Purchasing and General Services or a duly authorized designee.
- (6) "Division" means the Division of Purchasing and General Services.
- (7) "Electronic meeting" is as defined in Section 52-4-103.
- (8) "Open and Public Meetings Act" means those laws provided by Title 52, Chapter 4, Utah Code.
- (9) "Presiding Officer" means the Chair or designee.

#### **R33-2-4. Composition of Board.**

- (1) The Board consists of fifteen voting members, as well as a nonvoting secretary appointed by the Chief Procurement Officer, who must be an employee of the Division.
- (2) The secretary shall not be considered as part of the quorum requirement for Board meetings or determinations.



### **R33-2-5. Calling Meetings.**

The Chair or any three voting members may call meetings of the Board. The Executive Director of the Department of Administrative Services or Director may also call a meeting.

### **R33-2-6. Chair, Presiding Officer and Basic Responsibilities.**

- (1) The Chair shall be the Presiding Officer at all Board meetings.
- (2) The Chair may designate, either because of unavailability or any other reason, an alternate Presiding Officer, who is a member of the Board.
- (3) The Presiding Officer may make motions and have a vote on each matter before the Board. The Presiding Officer may second motions.
- (4) Unless otherwise directed by vote of the Board, the Presiding Officer shall be responsible for the operation of the meeting, shall have control over the items on the agenda, the order of the agenda, time limits that are needed, and other matters that relate to the orderly running of the meeting. Notwithstanding this, the Director or any three voting members may also place items on the Board agenda.
- (5) The Chair shall be elected by the Board and serve for one year. The Chair may be elected to succeeding terms.

### **R33-2-7. Secretary to the Board.**

- (1) The Chief Procurement Officer shall appoint an employee of the Division to serve as Secretary to the Board. The Secretary shall be present at each meeting of the Board, shall provide the posting of notice, minutes, any required recording, and all secretarial related requirements related to the Open and Public Meetings Act. The Secretary shall coordinate with others as needed for compliance with the Open and Public Meetings Act.
- (2) The Secretary shall maintain a record of Board meetings which shall include minutes, agendas and submitted documents, including those submitted electronically, that shall be available at reasonable times to the public.

### **R33-2-8. Meetings.**

Meetings are generally held in the conference room of the Division of Purchasing and General Services, 3rd floor, State Office Building, Capitol Hill, in Salt Lake City, Utah. The date, time and location may be identified or modified by the Chair and Director at any time when it is in the interest of the Board and the public.

### **R33-2-9. Compliance with Open and Public Meetings Act.**

All meetings of the Board shall be conducted in accordance with the Open and Public Meetings Act. All meetings are open to the public unless closed in whole or in part pursuant to the requirements of the Open and Public Meetings Act.

### **R33-2-10. Notice and Agenda.**

- (1) Notice shall be given of all meetings in accordance with the Open and Public Meetings Act.
- (2) The Director or Presiding Officer may determine items to be placed on the agenda. A vote of the Board may also place an item on an agenda for a future meeting. Board members may also contact the Chair or Director to request that an item be placed on the agenda.
- (3) The order of business shall be in the order placed on the agenda, unless the Presiding Officer or vote of the Board alters the order of business and there is no prejudice to interested persons.
- (4) Members of the Board, the Division, governmental agencies and the public may submit a request to the Secretary to the Board that an item be placed on the agenda subject to review and approval by the Presiding Officer or Director.
- (5) Each agenda shall include an agenda item that allows board members to request that an item be placed on a future agenda.

### **R33-2-11. Attendance, Quorum and Voting.**

- (1) Eight members of the Board are required for a quorum to transact business.
- (2) For any determination of the Board, it must be approved by a majority vote of those voting members present and it must receive an affirmative vote from at least five members.
- (3) Voting shall be expressed publicly when called for by the Presiding Officer. An affirmative vote shall be recorded for all Board members present that neither vote negatively nor specifically abstain. The number of affirmative, negative and abstaining votes shall be announced by the Presiding Officer, and the vote of each member shall be recorded by the Secretary.
- (4) Members must be in attendance, either in person or by electronic means in accordance with this Rule, in order to vote.

### **R33-2-12. Motions, Second to a Motion, Discussion, Continuances and Resolutions.**

- (1) Any voting member may make or second a motion.
- (2) Items may be continued to any subsequent meeting by vote of the Board.
- (3) A second to a motion is required prior to discussion by Board members.
- (4) After a motion is seconded, the Presiding Officer shall ask for discussion of the matter. The Presiding Officer shall call upon those who request to discuss the matter. The Presiding Officer retains the authority to place reasonable restrictions on the discussion to assure that the discussion is orderly and relevant to the motion. After the discussion,

or if no Board member desires to discuss the matter, the Board shall proceed to vote on the matter without the need for a formal call to question.

(5) The Board may enact resolutions.

### **R33-2-13. Committees and Appeals Panel.**

The Board Chair may appoint committees to investigate or report on any matter which is of concern to the Board. The appointment of an Appeals Panel is described in Rule R33-17.

### **R33-2-14. Order at Meetings.**

- (1) The Presiding Officer shall preserve order and decorum at all meetings of the Board and shall determine questions of order, which may be subject to a vote of the Board.
- (2) A person or persons creating a disturbance or otherwise obstructing the orderly process of a Board meeting may be ordered to leave the meeting.

### **R33-2-15. Rules of Order.**

All matters not covered by this Rule R33-2 shall be determined by Robert's Rules of Order, latest published edition; an abbreviated edition of Robert's Rules of Order as determined by the Presiding Officer; or abbreviated procedures as determined by the Presiding Officer.

### **R33-2-16. Electronic Meetings.**

- (1) Purpose. Section 52-4-207 requires any public body that convenes or conducts an electronic meeting to adopt a rule governing the use of electronic meetings. This Rule R33-2 establishes procedures for conducting Board meetings by electronic means.
- (2) Procedure. The following provisions govern any meeting at which one or more Board members appear electronically pursuant to Section 52-4-207:
  - (a) If one or more members of the Board desire to participate electronically, such member(s) shall contact the Director or Secretary. The Director shall assess the practicality of facility requirements needed to conduct the meeting electronically in a manner that allows for the attendance, participation and monitoring as required by this Rule. If it is practical, the Presiding Officer or Director shall determine whether to allow for such electronic participation, and the public notice of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the Board not participating electronically will be present and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.
  - (b) Notice of the meeting and the agenda shall be posted at the anchor location and be provided in accordance with the Open and Public Meetings Act. The anchor location is the physical location where the electronic meeting originates or where the participants are connected. The anchor location shall be identified in the public

notice for the meeting. Unless otherwise designated in the notice, the anchor location shall be a room in the Utah State Capitol Hill Complex where the Board would normally meet if the Board was not holding an electronic meeting.

- (c) Notice of the possibility of an electronic meeting shall be given to the Board members at least 24 hours before the meeting. In addition, the notice shall describe how a Board member may participate in the meeting electronically.
- (d) When notice is given of the possibility of a Board member participating electronically, any Board member may do so and any voting Board member, whether at the anchor location or participating electronically, shall be counted as present for purposes of a quorum and may fully participate and vote. At the commencement of the meeting, or at such time as any Board member initially appears electronically, the Presiding Officer shall identify for the record all those who are participating electronically. Votes by members of the Board who are not at the anchor location of the meeting shall be confirmed by the Presiding Officer.
- (e) The anchor location will have space and facilities so that interested persons and the public may attend, monitor and participate in the open portions of the meeting, as appropriate.

### **R33-2-17. Suspension of the Rules.**

By a vote of the Board, and to the extent allowed by law, any requirement of this Rule R33-2-1 through R33-2-17 may be suspended when necessary to better serve the public in the conduct of a Board meeting.

**KEY: government purchasing, Procurement Policy Board, rules of procedure**

**Date of Enactment or Last Substantive Amendment: July 8, 2014**

**Notice of Continuation: July 8, 2014**

**Authorizing, and Implemented or Interpreted Law: 63G-6a**

## **R33. Administrative Services, Purchasing and General Services.**

### **R33-3. Procurement Organization.**

#### **R33-3-101. Delegation of Authority of the Chief Procurement Officer.**

In addition to the other requirements of Part 3 of the Utah Procurement Code, the Chief Procurement Officer may delegate in writing any authority pursuant to Section 63G-6a-304 as deemed appropriate to any employees of the office of the chief procurement officer or of an executive branch procurement unit, respectively. These delegations shall remain in effect unless modified or revoked in writing. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.

**KEY: government purchasing, chief procurement officer, delegation of authority**

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## **R33. Administrative Services, Purchasing and General Services.**

### **R33-4. Supplemental Procurement Procedures**

#### **R33-4-101 Request for Statement of Qualifications**

Reserved

#### **R33-4-101a. Rejection of a Late Solicitation Response -- Delivery and Time Requirements.**

- (1) Except as provided in Subsection (4), an issuing procurement unit may not accept a response to a request for statement of qualifications after the time for submission of a request for statement of qualifications has expired.
- (2) When submitting a response to a request for statement of qualifications electronically, vendors 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 vendor is in the middle of uploading a response when the closing time arrives, the procurement unit will stop the process and the response will not be accepted.
- (3) When submitting a response to a request for statement of qualification by physical delivery (U.S. Mail, courier service, hand-delivery, or other physical means) vendors 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 response being late.
  - (a) All responses received by physical delivery will be date and time stamped by the procurement unit.
- (4) To the extent that an error on the part of the procurement unit or an employee of a procurement unit results in a response not being received by the established due date and time, the response shall be accepted as being on time.

#### **R33-4-101b. Vendors with Exclusive Authorization to Bid.**

- (1) The requirements of this rule shall only apply when a procurement unit issues a prequalification for potential vendors as set forth in Utah Code 63G-6a-403 for all qualified, responsive and responsible vendors with an exclusive dealership, franchise, distributorship, or other arrangement, from a manufacturer identifying the vendor as the only one authorized to submit bids or quotes for the specified procurement item within the State of Utah or a region within the State of Utah.
  - (a) Under the provisions of this rule, no vendor described in (1) may be excluded from the list of prequalified vendors, unless a determination is made by the procurement unit that a vendor is not qualified, responsive or responsible.
  - (b) The request for statements of qualifications shall indicate that all vendors on the prequalified vendor list will be invited to submit bids or quotes.

- (2) After the prequalified list has been compiled, a procurement unit may award a contract by obtaining bids or quotes from all vendors on the prequalified list taking into consideration a best value analysis that includes, as applicable:
  - (a) cost;
  - (b) compatibility with existing equipment, technology, software, accessories, replacement parts, or service;
  - (c) training, knowledge and experience of employees of the procurement unit and of the vendors;
  - (d) past performance of vendors and pertaining to the procurement item being purchased;
  - (e) the costs associated with transitioning from an existing procurement item to a new procurement item; or
  - (f) other factors determined in writing by the chief procurement officer or head of a procurement unit with independent procurement authority.
- (3) Procurement units must follow the requirements in R33-4-110 when obtaining quotes and the requirements in Part 6 of the Utah Procurement Code when obtaining bids.
- (4) An exception to the requirements of this rule may be authorized by the chief procurement officer or head of a procurement unit with independent procurement authority.

### **R33-4-103. Specifications.**

- (1) Public entities shall include in solicitation documents specifications for the procurement item(s).
- (2) Specifications shall be drafted with the objective of clearly describing the procurement unit's requirements and encouraging competition.
  - (a) Specifications shall emphasize the functional or performance criteria necessary to meet the needs of the procurement unit.
- (3) Persons with a conflict of interest, or who anticipate responding to the proposal for which the specifications are written, may not participate in writing specifications. Procurement units may retain the services of a person to assist in writing specifications, scopes of work, requirements, qualifications, or other components of a solicitation. However the person assisting in writing specifications shall not, at any time during the procurement process, be employed in any capacity by, nor have an ownership interest in, an individual, public or private corporation, governmental entity, partnership, or unincorporated association bidding on or submitting a proposal in response to the solicitation.
  - (a) Subsection R33-4-104(3) does not apply to the following:
    - (i) a design build construction project; and

- (ii) other procurements determined in writing by the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority.
- (b) Violations of this Subsection R33-4-104(3) may result in:
  - (i) the bidder or offeror being declared ineligible for award of the contract;
  - (ii) the solicitation being canceled;
  - (iii) termination of an awarded contract; or
  - (iv) any other action determined to be appropriate by the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority.
- (4) Brand Name or Equal Specifications.
  - (a) Brand name or equal specifications may be used when:
    - (i) "or equivalent" reference is included in the specification; and,
    - (ii) as many other brand names as practicable are also included in the specification.
  - (b) Brand name or equal specifications shall include a description of the particular design and functional or performance characteristics which are required. Specifications unique to the brands shall be described in sufficient detail that another person can respond with an equivalent brand.
  - (c) When a manufacturer's specification is used in a solicitation, the solicitation shall state the minimum acceptable requirements of an equivalent. When practicable, the procurement unit shall name at least three manufacturer's specifications.
- (5) Brand Name Requirements.
  - (a) If only one brand can meet the requirements set forth in the specifications, the procurement unit shall solicit from as many providers of the brand as practicable; and
  - (b) If there is only one provider that can meet the requirements set forth in the specifications, the procurement unit shall conduct the procurement in accordance with Section 63G-6a-802 and Section R33-8-101b.

**R33-4-109. Procedures When Two Bids, Quotes, or Statement of Qualifications Cannot Be Obtained.**

- (1) The requirement that a procurement unit obtain a minimum of two bids, quotes, or statements of qualifications is waived when only one vendor submits a bid, provides a quote, or submits a statement of qualifications under the following circumstances:
  - (a) A solicitation meeting the public notice requirements of Utah Code 63G-6a-112 results in only one vendor willing to bid, provide quotes, or submit a statement of qualifications;



- (b) Vendors on a multiple award contract, prequalification, or approved vendor list fail to bid, provide quotes, or submit statements of qualifications; or
- (c) A procurement unit makes a reasonable effort to invite all known vendors to bid, provide quotes, or submit statements of qualifications and all but one of the invited vendors contacted fail to bid, provide quotes, or submit statements of qualifications.
  - (i) Reasonable effort shall mean:
    - (A) Public notice under Utah Code 63G-6a-112;
    - (B) An electronic or manual search for vendors within the specific industry, fails to identify any vendors willing to submit bids or provide quotes;
    - (C) Contacting industry-specific associations or manufacturers for the names of vendors within that industry; or
    - (D) A determination by the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority that a reasonable effort has been made.
- (2) Before accepting a bid or quote from only one vendor, the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, shall consider:
  - (a) whether pricing is fair and reasonable as set forth in R33-6-109(1);
  - (b) canceling the procurement as set forth in R33-9-103; and
  - (c) bid security requirement as set forth in R33-11-202.
- (3) The chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, shall maintain records documenting the circumstances and reasons why fewer than two bids, quotes, or statements of qualifications were obtained.

#### **R33-4-110. Use of Electronic, Telephone, or Written Quotes.**

- (1) Quote means an informal purchasing process which solicits pricing information from several sources.
- (2) Quotation means a statement of price, terms of sale, and description of goods or services offered by a vendor to a procurement unit; and
  - (a) A quotation is nonbinding and does not obligate a procurement unit to make a purchase or a vendor to make a sale.
- (3) Electronic quote means a price quotation provided by a vendor through electronic means such as the internet, online sources, email, an interactive web-based market center, or other technology.
- (4) A procurement unit may use electronic, telephone, or written quotes to obtain pricing and other information for a procurement item within the small purchase or approved vendor threshold limits established by rule provided:

- (a) Quotations are for the same procurement item, including terms of sale, description, and quantity of goods or services;
  - (b) It is disclosed to the vendor that the quote is for a governmental entity and an inquiry is made as to whether the vendor is willing to provide a price discount to a governmental entity; and
  - (c) The procurement unit maintains a public record that includes:
    - (i) The name of each vendor supplying a quotation; and
    - (ii) The amount of each vendor's quotation.
- (5) An executive branch procurement unit, subject to this rule:
- (a) May obtain electronic, telephone, or written quotations for a procurement item costing less than \$5,000;
  - (b) Shall send a request to obtain quotations for a procurement item costing more than \$5,000 to the division of state purchasing;
    - (i) The division shall obtain quotations for executive branch procurement units for procurement items costing more than \$5,000; and
  - (c) May not obtain quotations for a procurement item available on state contract unless otherwise specified in the terms of a solicitation or contract or authorized by rule or statute.

**KEY: government purchasing, general procurement provisions, specifications, small purchases**

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## **R33. Administrative Services, Purchasing and General Services.**

### **R33-5. Request for Information.**

#### **R33-5-101. Request for Information.**

In addition to the requirements of Part 5 of the Utah Procurement Code, a Request for Information should indicate the procedure for business confidentiality claims and other protections provided by the Utah Government Records and Access Management Act.

#### **R33-5-104. Small Purchases.**

Small purchases shall be conducted in accordance with the requirements set forth in Section 63G-6a-506. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

- (1) Small Purchase thresholds:
  - (a) The "Individual Procurement" threshold is a maximum amount of \$1,000 for a procurement item;
    - (i) For individual procurement item(s) costing up to \$1,000, a procurement unit may select the best source by direct award and without seeking competitive bids or quotes.
  - (b) The single procurement aggregate threshold is a maximum amount of \$5,000 for multiple procurement item(s) purchased from one source at one time; and
  - (c) The annual cumulative threshold from the same source is a maximum amount of \$50,000.
- (3) Whenever practicable, the Division of Purchasing and General Services and procurement units shall use a rotation system or other system designed to allow for competition when using the small purchases process.

#### **R33-5-105. Small Purchases Threshold for Design Professional Services.**

- (1) The small purchase threshold for design professional services is a maximum amount of \$100,000.
- (2) Design professional services may be procured up to a maximum of \$100,000, by direct negotiation after reviewing the qualifications of a minimum of three design professional firms.
- (3) When using this rule in conjunction with an approved vendor list, the procurement unit shall select design professional firms identified in Subsection (2) from the approved vendor list using one or more of the following methods:
  - (a) A rotation system, organized alphabetically, numerically, or randomly;
  - (b) Assignment of vendors to a specified geographic area;
  - (c) Assignment of vendors based on each vendor's particular expertise or field; or
  - (d) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority;

- (4) A procurement unit shall include minimum specifications when using the small purchase threshold for design professional services.
- (5) Executive Branch procurement units, to the extent they do not have independent procurement authority, shall involve the Division of Purchasing in the qualification process described under Section 63G-6a-410, the approved vendor list process described under Section 63G-6a-507, and the evaluation and fee negotiation process described in Part 15 of the Utah Procurement Code in the procurement of design professional services.
- (6) A procurement unit using this rule must comply with the following:
  - (a) Utah Code 63G-6a-506(8) -- Prohibition against dividing a procurement into one or more smaller procurements;
  - (b) Utah Code 63G-6a, Part 24 -- Unlawful Conduct and Penalties;
  - (c) R33-24-104 -- Socialization with Vendors and Contractors;
  - (d) R33-24-105 -- Financial Conflict of Interests Prohibited;
  - (e) R33-24-106 -- Personal Relationship, Favoritism, or Bias Participation Prohibitions;  
and
  - (f) All other applicable laws and rules.

### **R33-5-106. Small Purchases Threshold for Construction Projects.**

- (1) The small construction project threshold is a maximum of \$2,500,000 for direct construction costs, including design and allowable furniture or equipment costs;
- (2) A procurement unit shall include minimum specifications when using the small purchases threshold for construction projects.
- (3) Executive Branch procurement units, to the extent they do not have independent procurement authority, shall involve the Division of Purchasing in the qualification process described under Section 63G-6a-410, the approved vendor list process described under Section 63G-6a-507, and the obtaining of quotes, bids or proposals in the procurement of small construction projects.
- (4) The chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, may procure small construction projects up to a maximum of \$25,000 by direct award without seeking competitive bids or quotes after documenting that all building code approvals, licensing requirements, permitting and other construction related requirements are met. The awarded contractor must certify that it is capable of meeting the minimum specifications of the project.
- (5) The chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, may procure small construction projects costing more than \$25,000 up to a maximum of \$100,000 by obtaining a minimum of two competitive quotes that include minimum specifications and shall award to the contractor with the lowest quote that meets the specifications after documenting that all applicable building code approvals, licensing requirements, permitting and other construction related requirements are met.

- (6) When using this rule in conjunction with an approved vendor list, the procurement unit shall select vendors and contractors identified in Subsections (4) and (5) from the approved vendor list using one or more of the following methods:
  - (a) A rotation system, organized alphabetically, numerically, or randomly;
  - (b) Assignment of vendors to a specified geographic area;
  - (c) Assignment of vendors based on each vendor's particular expertise or field;
  - (d) Invite all contractors on the approved vendor list to submit quotes, applicable to Subsection (5) only; or
  - (e) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority;
- (7) Under this rule, the chief procurement officer or head of a procurement unit with independent procurement authority shall procure small construction projects costing more than \$100,000 up to a maximum of \$2.5 million through a two-stage process. Stage one, qualify vendors under Section 63G-6a-410 and develop an Approved Vendor List under Section 63G-6a-507. Stage two, issue to all vendors, qualified and approved in stage one, an invitation for bids or request for proposals and use the procedures set forth therein to award a contract.
- (8) A procurement unit using this rule must comply with the following:
  - (a) Utah Code 63G-6a-506(8) -- Prohibition against dividing a procurement into one or more smaller procurements;
  - (b) Utah Code 63G-6a, Part 24 -- Unlawful Conduct and Penalties;
  - (c) R33-24-104 -- Socialization with Vendors and Contractors;
  - (d) R33-24-105 -- Financial Conflict of Interests Prohibited;
  - (e) R33-24-106 -- Personal Relationship, Favoritism, or Bias Participation Prohibitions; and
  - (f) All other applicable laws and rules.

### **R33-5-107. Quotes for Small Purchases from \$1,001 to \$50,000.**

- (1) For procurement item(s) where the cost is greater than \$1,000 but up to a maximum of \$5,000, a procurement unit shall obtain a minimum of two competitive quotes that include minimum specifications and shall purchase the procurement item from the responsible vendor offering the lowest quote that meets the specifications.
- (2) For procurement item(s) where the cost is greater than \$5,000 up to a maximum of \$50,000, a procurement unit with independent procurement authority or the Division of Purchasing and General Services on behalf of an executive branch procurement unit without independent procurement authority, as applicable, shall obtain a minimum of two competitive quotes that include minimum specifications and shall purchase the procurement item from the responsible vendor offering the lowest quote that meets the specifications.

- (3) For procurement item(s) costing over \$50,000, a procurement unit with independent procurement authority or the Division of Purchasing and General Services on behalf of an executive branch procurement unit without independent procurement authority, as applicable, shall conduct an invitation for bids or other procurement process outlined in the Utah Procurement Code.
- (4) Limited Purchasing Delegation for Small Purchases. The Division of Purchasing and General Services may delegate limited purchasing authority for small purchases costing more than \$5,000 up to a maximum of \$50,000, to an executive branch procurement unit provided that the executive branch procurement unit enters into an agreement with the Division outlining the duties and responsibilities of the unit to comply with applicable laws, rules, policies and other requirements of the Division.
- (5) The names of the vendors offering quotations and bids and the date and amount of each quotation or bid shall be recorded and maintained as a governmental record.
- (6) A procurement unit using this rule must comply with the following:
  - (a) Utah Code 63G-6a-506(8) -- Prohibition against dividing a procurement into one or more smaller procurements;
  - (b) Utah Code 63G-6a, Part 24 -- Unlawful Conduct and Penalties;
  - (c) R33-24-104 -- Socialization with Vendors and Contractors;
  - (d) R33-24-105 -- Financial Conflict of Interests Prohibited;
  - (e) R33-24-106 -- Personal Relationship, Favoritism, or Bias Participation Prohibitions;  
and
  - (f) All other applicable laws and rules.
- (7) When using this rule in conjunction with an approved vendor list, the procurement unit shall select vendors from the approved vendor list using one or more of the following methods:
  - (a) A rotation system, organized alphabetically, numerically, or randomly;
  - (b) Assignment of vendors to a specified geographic area;
  - (c) Assignment of vendors based on each vendor's particular expertise or field;
  - (d) Invite all vendors on the approved vendor list to submit quotes; or
  - (e) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority;

### **R33-5-108. Small Purchases of Professional Service Providers and Consultants.**

- (1) The small purchase threshold for professional service providers and consultants is a maximum amount of \$100,000.
- (2) After reviewing the qualifications of a minimum of two professional service providers or consultants, the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, may obtain professional services or consulting services:

- (a) up to a maximum of \$50,000 by direct negotiation; or
  - (b) over \$50,000 up to a maximum of \$100,000 by obtaining a minimum of two quotes.
- (3) When using this rule in conjunction with an approved vendor list, the procurement unit shall select contractors from the approved vendor list using one or more of the following methods:
- (a) A rotation system, organized alphabetically, numerically, or randomly;
  - (b) Assignment of vendors to a specified geographic area;
  - (c) Assignment of vendors based on each vendor's particular expertise or field;
  - (d) Invite all vendors on the approved vendor list to submit quotes; or
  - (e) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority;
- (4) Executive Branch procurement units, to the extent they do not have independent procurement authority, shall involve the Division of Purchasing at the beginning of the quote or solicitation process, in the procurement of professional services or consulting services.
- (5) A procurement unit using this rule must comply with the following:
- (a) Utah Code 63G-6a-506(8) -- Prohibition against dividing a procurement into one or more smaller procurements;
  - (b) Utah Code 63G-6a, Part 24 -- Unlawful Conduct and Penalties;
  - (c) R33-24-104 -- Socialization with Vendors and Contractors;
  - (d) R33-24-105 -- Financial Conflict of Interests Prohibited;
  - (e) R33-24-106 -- Personal Relationship, Favoritism, or Bias Participation Prohibitions;
  - (f) R33-4-103(3) -- Persons with a conflict of interest, or who anticipate responding to the proposal for which the specifications are written, may not participate in writing specifications; and
  - (g) All other applicable laws and rules.

### **R33-5-201. Approved Vendor List.**

In accordance with the provisions set forth in Section 63G-6a-507, a procurement unit may establish an approved vendor list and award contracts using the following methods and all associated laws and rules:

- (a) Section 63G-6a-113 and 507(6)(b), Contract Award Based on Established Terms;
- (b) Section 63G-6a-609, Multiple Stage Bidding Process;
- (c) Section 63G-6a-710, Multiple Stage RFP Process;
- (d) Section 63G-6a, Part 15, Design Professional Services; or
- (e) Section 63G-6a-506, Small Purchases.

### **R33-5-202. Contract Award Based on Established Terms.**

- (1) In accordance with Section 63G-6a-113 and 507(6)(b), a procurement unit may award a contract to a vendor on an approved vendor list at an established price based on:
  - (a) A price list, rate schedule, or pricing catalog:
    - (i) Submitted by a vendor and accepted by the procurement unit; or
    - (ii) Mandated by the procurement unit or a federal agency; or
  - (b) A federal regulation for a health and human services program.
- (2) Established terms submitted by vendors on an approved vendor list:
  - (a) When awarding a contract to an approved vendor based on a price list, rate schedule, or pricing catalog submitted by the vendor, the procurement unit shall, as applicable:
    - (i) Assign work or purchase from the approved vendor with the lowest price, rate or catalog price;
      - (A) In case of a tie for the lowest price, the procurement unit shall follow the process described in Section R33-6-111 to resolve tie; and
      - (B) If the lowest-cost approved vendor cannot provide the procurement item or quantity needed, then work shall be assigned or the purchase made from the next lowest-cost vendor, and so on, until the procurement unit's needs are met;
    - (ii) Establish a cost threshold based on cost analysis as set forth in Section R33-12-603 and 604, and assign work or purchase from an approved vendor meeting the cost threshold using one of the following methods:
      - (A) A rotation system, organized alphabetically, numerically, or randomly;
      - (B) Assignment of vendors to a specified geographic area;
      - (C) Assignment of vendors based on each vendor's particular expertise or field; or
      - (D) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority; and
    - (iii) In accordance with Section 63G-6a-1206.5, an approved vendor may lower its price, rate, or catalog price at any time during the time a contract is in effect in order to be assigned work or receive purchases under Subsections (i) and (ii).
- (3) Established terms mandated by procurement unit or federal agency:
  - (a) When awarding a contract to an approved vendor based on a price list, rate schedule, or pricing catalog mandated by the procurement unit or a federal agency, the procurement unit shall use one of the following methods to assign work or purchase from a vendor on an approved vendor list:
    - (i) A rotation system, organized alphabetically, numerically, or randomly;
    - (ii) Assignment of vendors to a specified geographic area;
    - (iii) Assignment of vendors based on each vendor's particular expertise or field; or
    - (iv) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority;



- (4) When awarding a contract to an approved vendor based on a price list, rate schedule, or pricing catalog based on a federal regulation for a health and human services program the procurement unit shall follow the requirements set forth in the applicable federal regulation to assign work or make a purchase.
- (5) In accordance with the provisions set forth in Section 63G-6a-2105, the chief procurement officer may award a contract(s) to vendors on an approved vendor list on a statewide, regional, or combined statewide and regional basis.

**R33-5-203. Performance Rating System for Vendors on an Approved Vendor List.**

- (1) A procurement unit may develop a performance rating system to evaluate the performance of vendors on an approved vendor list, provided the performance rating system is described in the Request for Statement of Qualifications used to establish the approved vendor list. and includes:
  - (a) The minimum performance rating threshold that approved vendors must achieve in order to remain on the approved vendor list; and
  - (b) A statement indicating that vendors whose performance does not meet the minimum performance rating threshold may be disqualified and removed from the approved vendor list.
- (2) A procurement unit that disqualifies and removes a vendor from an approved vendor list shall:
  - (a) Make a written finding that:
    - (i) Describes the performance rating system;
    - (ii) Identifies the minimum performance rating threshold; and
    - (iii) Explains the performance rating achieved by the disqualified vendor; and
  - (b) Provide a copy of the written finding to the disqualified vendor.

**R33-5-204. Approved Vendor Lists -- Using Small Purchase Process.**

- (1) When awarding a contract to an approved vendor using the small purchasing process, the procurement unit shall follow the small purchase requirements set forth in Section 63G-6a-506 and the following Administrative Rules as applicable:
  - (a) Section R33-5-104. Small Purchases
  - (b) Section R33-5-105. Small Purchases Threshold for Design Professional Services;
  - (c) Section R33-5-106. Small Purchases Threshold for Construction Projects;
  - (d) Section R33-5-107. Quotes for Small Purchases from \$1,001, to \$50,000;
  - (e) Section R33-5-108. Small Purchases of Professional Service Providers and Consultants;
- (2) Executive branch employees are required to use state contracts for all small purchases for procurement items available on state contract.

**KEY: government purchasing, procurement, request for information**  
**Date of Enactment or Last Substantive Amendment: August 22, 2016**  
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## **R33. Administrative Services, Purchasing and General Services.**

### **R33-6. Bidding.**

#### **R33-6-101. Competitive Sealed Bidding; Multiple Stage Bidding; Reverse Auction.**

- (1) Competitive Sealed Bidding shall be conducted in accordance with the requirements set forth in Sections 63G-6a-601 through 63G-6a-612. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.
- (2) The conducting procurement unit is responsible for all content contained in the competitive sealed bidding, multiple stage bidding, and reverse auction solicitation documents, including:
  - (a) reviewing all schedules, dates, and timeframes;
  - (b) approving content of attachments;
  - (c) providing the issuing procurement unit with redacted documents, as applicable;
  - (d) assuring that information contained in the solicitation documents is public information; and
  - (e) understanding the description of the procurement item(s) being sought, all criteria, requirements, factors, and formulas to be used for determining the lowest responsible and responsive bidder.
- (3)
  - (a) The award of a contract shall be to the lowest responsive and responsible bidder who meets the objective criteria described in the invitation for bids.
  - (b) Bids shall be based on the lowest bid for the entire term of the contract, excluding renewal periods.
  - (c) Unless an exception is authorized in writing by the chief procurement officer or head of a procurement unit with independent procurement authority, cost may not be divided or evaluated on any other basis than the entire term of the contract, excluding renewal periods.

#### **R33-6-102. Bidder Submissions.**

- (1) The invitation for bids shall include the information required by Section 63G-6a-603 and shall also include a "Bid Form" or forms, which shall provide lines for each of the following:
  - (a) the bidder's bid price;
  - (b) the bidder's acknowledged receipt of addenda issued by the procurement unit;
  - (c) the bidder to identify other applicable submissions; and
  - (d) the bidder's signature

- (2) Bidders may be required to submit descriptive literature and/or product samples to assist the chief procurement officer or head of a procurement unit with independent procurement authority in evaluating whether a procurement item meets the specifications and other requirements set forth in the invitation to bid.
  - (a) Product samples must be furnished free of charge unless otherwise stated in the invitation for bids, and if not destroyed by testing, will upon written request within any deadline stated in the invitation for bids, be returned at the bidder's expense. Samples must be labeled or otherwise identified as specified in the invitation for bids by the procurement unit.
- (3) The provisions of Section R33-7-105 shall apply to protected records.
- (4) Bid, payment and performance bonds or other security may be required for procurement items as set forth in the invitation for bids. Bid, payment and performance bond amounts shall be as prescribed by applicable law or must be based upon the estimated level of risk associated with the procurement item and may not be increased above the estimated level of risk with the intent to reduce the number of qualified bidders.
- (5) All bids must be based upon a definite calculated price
  - (a) "Indefinite quantity contract" means a fixed price contract for an indefinite amount of procurement items to be supplied as ordered by a procurement unit, and does not require a minimum purchase amount, or provide a maximum purchase limit;
  - (b) "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; and
  - (c) Bids may not be based on using another bidder's price, including a percentage discount, 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.

### **R33-6-103. Pre-Bid Conferences and Site Visits.**

- (1) Mandatory pre-bid conferences and site visits may be held to explain the procurement requirements in accordance with the following:
  - (a) Except as authorized in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority, pre-bid conferences and site visits must require mandatory attendance by all bidders.
  - (b) Except as authorized in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority, pre-bid conferences and site visits allowing optional attendance by bidders are not permitted.
  - (c) A pre-bid conference may be attended via the following:
    - (i) attendance in person;
    - (ii) teleconference participation;
    - (iii) webinar participation;
    - (iv) participation through other electronic media approved by the chief procurement officer or head of a procurement unit with independent procurement authority.

- (d) Mandatory site visits must be attended in person.
  - (e) 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.
  - (f) The solicitation must state that failure to attend a mandatory pre-bid conference shall result in the disqualification of any bidder that does not have an authorized representative attend the entire duration of the mandatory pre-bid conference.
  - (g) The solicitation must state that failure to attend a mandatory site visit shall result in the disqualification of any bidder that does not have an authorized representative attend the entire duration of the mandatory site visit.
  - (h) At the discretion of the conducting procurement unit, audio or video recordings of pre-bid conferences and site visits may be used.
  - (i) Listening to or viewing audio or video recordings of a mandatory pre-bid conference or site visit may not be substituted for attendance. If the chief procurement officer or the head of a procurement unit with independent procurement authority grants an exception to the mandatory requirement in writing, the procurement unit may require all bidders that do not have an authorize representative in attendance for the entire pre-bid conference or site visit to review any audio or video recording made.
- (2)(a) If a pre-bid conference or site visit is held, the conducting procurement unit shall maintain:
- (i) an attendance log including the name of each attendee, the entity the attendee is representing, and the attendee's contact information;
  - (ii) minutes of the pre-bid conference or site visit; and
  - (iii) copies of any documents distributed by the conducting procurement unit to the attendees at the pre-bid conference or site visit.
- (b) The issuing procurement unit shall publish as an addendum to the solicitation:
- (i) the attendance log;
  - (ii) minutes of the pre-bid conference or site visit;
  - (iii) copies of any documents distributed to attendees at the pre-bid conference or site visit; and
  - (iv) any verbal modifications made to any of the solicitation documents. All verbal modifications to the solicitation documents shall be reduced to writing.

### **R33-6-104. Addenda to Invitation for Bids.**

Prior to the submission of bids, a procurement unit may issue addenda which may modify any aspect of the Invitation for Bids.

- (a) Addenda shall be distributed within a reasonable time to allow prospective bidders to consider the addenda in preparing bids.
- (b) After the due date and time for submitting bids, at the discretion of the chief procurement officer or head of a procurement unit with independent procurement

authority, 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 for Bids that, in the opinion of the chief procurement officer or head of a procurement unit with independent procurement authority, likely would have impacted the number of bidders responding to the Invitation for Bids.

### **R33-6-105. Rejection of a Late Bid -- Delivery and Time Requirements.**

- (1) Except as provided in Subsection (4), an issuing procurement unit may not accept a bid after the time for submission of a bid has expired as set forth in Section 63G-6a-604(4).
- (2) When submitting a bid 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 procurement unit will stop the process and the bid will not be accepted.
- (3) When submitting 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 being late.
  - (a) All bids received by physical delivery will be date and time stamped by the procurement unit.
- (4) To the extent that an error on the part of the procurement unit or an employee of a procurement unit results in a bid not being received by the established due date and time, the bid shall be accepted as being on time.

### **R33-6-106. Voluntary Withdrawal of a 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.

### **R33-6-107. Errors Discovered After the Award of Contract.**

- (1) Errors discovered after the award of a contract may only be corrected if, after consultation with the chief procurement officer or head of a procurement unit with independent procurement authority and the attorney general's office or other applicable legal counsel, it is determined that the correction of the mistake does not violate the requirements of the Utah Procurement Code or these administrative rules.
- (2) Any correction made under this subsection must be supported by a written determination signed by the chief procurement officer or the head of a procurement unit with independent procurement authority.

### **R33-6-108. Re-solicitation of a Bid.**

- (1) Re-solicitation of a bid may occur only if the chief procurement officer or head of a procurement unit with independent procurement authority determines that:
  - (a) A material change in the scope of work or specifications has occurred;
  - (b) procedures outlined in the Utah Procurement Code were not followed;
  - (c) additional public notice is desired;
  - (d) there was a lack of adequate competition; or
  - (e) other reasons exist that are in the best interests of the procurement unit.
- (2) 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.

### **R33-6-109. Only One Bid Received.**

- (1) If only one responsive and responsible bid is received in response to an Invitation for Bids, including multiple stage bidding, an award may be made to the single bidder if the procurement officer determines that the price submitted is fair and reasonable as set forth in R33-12-603 and R33-12-604, and that other prospective bidders had a reasonable opportunity to respond, or there is not adequate time for re-solicitation. Otherwise, the bid may be rejected and:
  - (a) a new invitation for bids solicited; or
  - (b) the procurement canceled.

### **R33-6-110. Multiple or Alternate Bids.**

- (1) Multiple or alternate bids will not be accepted, unless otherwise specifically required or allowed in the invitation for bids.
- (2) If a bidder submits multiple or alternate bids that are not requested in the invitation for bids, the chief procurement officer or head of a procurement unit with independent procurement authority will only accept the bidder's primary bid and will not accept any other bids constituting multiple or alternate bids.

### **R33-6-111. Methods to Resolve Tie Bids.**

- (1) In accordance with Section 63G-6a-608, 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 invitation to bid form that it is a Utah resident bidder.
- (2) If a Utah resident bidder is not identified, the preferred method for resolving tie bids shall be for the chief procurement officer or head of a procurement unit with independent procurement authority by tossing a coin in the presence of a minimum of three witnesses with the firm first in alphabetical order being heads.
- (3) Other methods to resolve a tie bid described in Section 63G-6a-608 may be used as deemed appropriate by the chief procurement officer or head of a procurement unit with independent procurement authority.

**R33-6-112. Publication of Award.**

- (1) The issuing procurement unit 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:
  - (a) the name of the bidder to which the contract is awarded and the price(s) of the procurement item(s); and
  - (b) the names and the prices of each bidder to which the contract is not awarded.

**R33-6-113. Multiple Stage Bidding Process.**

Multiple stage bidding shall be conducted in accordance with the requirements set forth in Section 63G-6a-609.

- (1) The chief procurement officer or head of a procurement unit with independent procurement authority may hold a pre-bid conference as described in Section R33-6-103 to discuss the multiple stage bidding process or for any other permissible purpose.

**KEY: government purchasing, sealed bidding, multiple stage bidding, reverse auction**

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## **R33. Administrative Services, Purchasing and General Services.**

### **R33-7. Request for Proposals.**

#### **R33-7-101. Conducting the Request for Proposals Standard Procurement Process.**

Request for Proposals shall be conducted in accordance with the requirements set forth in Sections 63G-6a-701 through 63G-6a-711, Utah Procurement Code. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

#### **R33-7-102. Content of the Request for Proposals.**

- (1) In addition to the requirements set forth under Section 63G-6a-703, the request for proposals solicitation shall include:
  - (a) a description of the format that offerors are to use when submitting a proposal including any required forms; and
  - (b) instructions for submitting price.
- (2) The conducting procurement unit is responsible for all content contained in the request for proposals solicitation documents, including:
  - (a) reviewing all schedules, dates, and timeframes;
  - (b) approving content of attachments;
  - (c) providing the issuing procurement unit with redacted documents, as applicable;
  - (d) assuring that information contained in the solicitation documents is public information; and
  - (e) understanding the scope of work, all evaluation criteria, requirements, factors, and formulas to be used in determining the scoring of proposals; and
  - (f) for executive branch procurement units the requirements of Section 63G-6a-110(6).

#### **R33-7-103. Multiple Stage RFP Process.**

- (1) In addition to the requirements set forth under Section 63G-6a-710, the multiple stage request for proposals solicitation shall include:
  - (a) a description of the stages and the criteria and scoring that will be used to evaluate proposals at each stage; and
  - (b) the methodology used to determine which proposals shall be disqualified from additional stages.

### **R33-7-103a. Multiple Stage Cost Qualification RFP Process.**

Section 63G-6a-710 authorizes procurement units to use a multiple stage RFP process. This Rule sets forth the process for issuing a multiple stage RFP process where cost is evaluated prior to the technical requirements. The concept behind this "multiple stage cost qualification RFP process" is that for certain types of procurements, a procurement unit may not want to spend time evaluating the technical responses of proposals with cost estimates that exceed the stated budget or significantly exceed the lowest cost proposal. Statute does not restrict the number of stages that may occur in a multiple stage RFP, the number or type of criteria that may be used to evaluate proposals or the sequencing of when evaluation criteria must be evaluated. However, statute does place restrictions on procedures such as separating cost, when the evaluation committee can and cannot change scores, issuing a justification statement and, if applicable, conducting a cost-benefit analysis, and so on. The instructions contained in this multiple stage cost qualification RFP process comply with all provisions set forth in Utah Code Title 63G-6a, Part 7 and associated Rule R33-7.

(1) Definitions:

- (a) "Multiple stage cost qualification RFP process" means a multiple stage RFP process in which cost proposals are evaluated prior to the evaluation of technical criteria and are used to reject offerors based on established cost criteria.
- (b) "Maximum cost differential percentage threshold" is a cost ceiling that is established by the conducting procurement unit that an offeror's cost proposal must not exceed or the offeror's proposal will be rejected and the offeror will not be allowed to proceed to a subsequent stage. The maximum cost differential percentage threshold may be based on the following:
  - (i) The lowest cost proposal submitted;
  - (ii) The conducting procurement's stated budget; or
  - (iii) A combination of (i) and (ii).

(2) The chief procurement officer or head of procurement unit with independent procurement authority may issue a multiple stage RFP where cost is used to qualify offerors for subsequent stages or to narrow the number of offerors that will move on to subsequent stages in accordance with the requirements set forth in Utah Code 63G-6a, Part 7 and Rule R33-7.

(3) When using the multiple stage cost qualification RFP process the conducting procurement unit shall establish and include in the RFP:

- (a) The minimum mandatory pass or fail requirements that proposals must meet in stage one in order to move on to stage two;
- (b) The maximum cost differential percentage threshold that proposals must not exceed in stage two in order to move on to stage three;
- (c) The technical criteria and a score threshold that proposals must meet in stage three in order to be eligible to move on to stage four; and
- (d) If applicable, the total combined score threshold in stage four that proposals must meet to determine best value and be eligible for contract award.

- (4) Except as provided in Section 63G-6a-707(8), the following process shall be used to evaluate proposals and award a contract under this multiple stage process:
- (a) During stage one, an individual assigned by the conducting procurement unit shall evaluate each offeror's proposal in response to the minimum mandatory pass or fail requirements set forth in the RFP:
    - (i) Offerors with proposals that do not meet the mandatory minimum pass or fail requirements shall be rejected and are not allowed to move on to subsequent stages and are not eligible to receive a contract award;
    - (ii) Offerors with proposals that meet the mandatory minimum pass or fail requirements shall be deemed qualified to move on to stage two;
  - (b) During stage two, the issuing procurement unit shall assign an individual, who is not a member of the evaluation committee, to evaluate the cost proposals of offerors qualified in stage one in response to the cost criteria and maximum cost differential percentage threshold set forth in the RFP.
    - (i) The individual assigned by the issuing procurement unit to evaluate cost proposals shall do so outside the presence of the evaluation committee and shall not share the cost proposals or the results of the cost proposal evaluations with the evaluation committee until all technical scoring is completed in stage three;
    - (ii) Offerors with cost proposals that exceed the maximum cost differential percentage threshold shall be rejected, not allowed to move on to subsequent stages, and not eligible to receive a contract award;
    - (iii) Offerors with cost proposals that do not exceed the maximum cost differential percentage threshold shall be deemed qualified to move on to stage three;
    - (iv) Cost shall be evaluated in accordance with Section 63G-6a-707(5)(b)(i); and
    - (v) A cost score shall be calculated based on the cost formula set forth in the RFP for each proposal identified in Subsection (3)(b)(iii) of this Rule;
  - (c) During stage three, the evaluation committee shall score the proposal of each offeror qualified in stage two, in response to the technical evaluation criteria set forth in the RFP, without having access to any information relating to the cost or the scoring of the cost. Technical criteria shall be scored in accordance with Section R33-7-704 or rules established by the applicable rulemaking authority;
  - (d) During stage four, the individual assigned by the issuing procurement unit, who is not a member of the evaluation committee, shall add the cost scores to the evaluation committee's final recommended technical scores to derive the total combined score for each proposal in accordance with the process set forth in Section 63G-6a-707(5)(a) through (c);
  - (e) In order to determine best value to the procurement unit, the evaluation committee shall prepare a justification statement and, if applicable, a cost-benefit analysis, in accordance with Section 63G-6a-708 and 709; and
  - (f) A contract may be awarded to the offeror with the proposal having the highest total combined score, or multiple contracts may be awarded to offerors with proposals

meeting the total combined score threshold set forth in the RFP, in accordance with Section 63G-6a-709.

- (5) Maximum cost differential percentage thresholds include the following examples:
- (a) Lowest Cost Proposal Example: The maximum cost differential percentage threshold is within 10% above the lowest cost proposal:
    - (i) Offerors with cost proposals that exceed 10% above the proposal with the lowest cost will be rejected. Offerors with cost proposals that do not exceed 10% above the proposal with the lowest cost will move on to the subsequent stage;
  - (b) Stated Budget Example: The maximum cost differential percentage threshold is within 5% above the conducting procurement unit's stated project budget:
    - (i) Offerors with cost proposals that exceed 5% above the stated budget will be rejected. Offerors with cost proposals that do not exceed 5% above the stated budget will move on to the subsequent stage; and
  - (a) Combination Lowest Cost Proposal and Stated Budget Example: the maximum cost differential percentage threshold is within 8% above the lowest cost proposal and within 2% above the conducting procurement unit's stated project budget:
    - (i) Offerors with cost proposals that exceed 8% above the proposal with the lowest cost will be rejected and offerors with cost proposals that exceed 2% above the stated budget will be rejected. Offerors with cost proposals that do not exceed 8% above the proposal with the lowest cost and do not exceed 2% above the stated budget will move on to the subsequent stage.
- (6) Additional multiple stage RFP processes may be developed and used to cover the wide range of different procurements that public entities encounter, provided the processes comply with the requirements set forth in the Utah Procurement Code and Title R33.

#### **R33-7-104. Exceptions to Terms and Conditions Published in the RFP.**

- (1) Offerors requesting exceptions and/or additions to the Standard Terms and Conditions published in the RFP must include the exceptions and/or additions with the proposal response.
- (2) 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 RFP, the exceptions and/or additions have been approved by the Attorney General's Office or other applicable legal counsel, and it is determined by the head of the issuing procurement unit that it is not beneficial to the procurement unit to republish the solicitation.
- (3) Offerors may not submit requests for exceptions and/or additions by reference to a vendor's website or URL
- (4) A procurement unit may refuse to negotiate exceptions and/or additions:
  - (a) that are determined to be excessive;
  - (b) that are inconsistent with similar contracts of the procurement unit;

- (c) to warranties, insurance, indemnification provisions that are necessary to protect the procurement unit after consultation with the Attorney General's Office or other applicable legal counsel;
  - (d) where the solicitation specifically prohibits exceptions and/or additions; or
  - (e) that are not in the best interest of the procurement unit.
- (5) If negotiations are permitted, a procurement unit 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.
- (6) 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 procurement unit, the negotiations may be terminated and a contract not awarded to that offeror and the procurement unit may move to the next eligible offeror.

### **R33-7-105. Protected Records.**

- (1)(a) 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 Section 13-24-2 of the Utah Code.
- (b) Commercial information or non-individual financial information subject to the provisions of Section 63G-2-305(2).
- (c) Other Protected Records under GRAMA.
- (2) Process For Requesting Non-Disclosure. Any person requesting that a record be protected shall include with the proposal or submitted document:
- (a) 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
- (b) a concise statement of the reasons supporting each claimed provision of business confidentiality or protected.

### **R33-7-106. Notification.**

- (1) A person who complies with Section R33-7-105 shall be notified by the procurement unit prior to the public release of any information for which a claim of confidentiality has been asserted.
- (2) Except as provided by court order, the procurement unit to whom the request for a record is made under GRAMA, may not disclose a record claimed to be protected under Section R33-7-105 but which the procurement unit or State Records Committee determines should be disclosed until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal, is reached. Section R33-7-106 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.

- (3) 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 in compliance with Section 63G-6a-709.5.

### **R33-7-107. Process for Submitting Proposals with Protected Business Confidential Information.**

- (1) If an offeror submits a proposal that contains information claimed to be business confidential or protected information, the offeror must submit two separate proposals:
  - (a) One redacted version for public release, with all protected business confidential information either blacked-out or removed, clearly marked as "Redacted Version"; and
  - (b) One non-redacted version for evaluation purposes clearly marked as "Protected Business Confidential."
    - (i) Pricing may not be classified as business confidential and will be considered public information.
    - (ii) An entire proposal may not be designated as "PROTECTED", "CONFIDENTIAL" or "PROPRIETARY" and shall be considered non-responsive unless the offeror removes the designation.

### **R33-7-201. Pre-Proposal Conferences and Site Visits.**

- (1) Mandatory pre-proposal conferences and site visits may be held to explain the procurement requirements in accordance with the following:
  - (a) Except as authorized in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority, pre-proposal conferences and site visits must require mandatory attendance by all offerors.
  - (b) Except as authorized in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority, pre-proposal conferences and site visits allowing optional attendance by offerors are not permitted.
  - (c) A pre-proposal conference may be attended via the following:
    - (i) attendance in person;
    - (ii) teleconference participation;
    - (iii) webinar participation;
    - (iv) participation through other electronic media approved by the chief procurement officer or head of a procurement unit with independent procurement authority.
  - (d) Mandatory site visits must be attended in person.
  - (e) 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.

- (f) The solicitation must state that failure to attend a mandatory pre-proposal conference shall result in the disqualification of any offeror that does not have an authorized representative attend the entire duration of the mandatory pre-proposal conference.
  - (g) The solicitation must state that failure to attend a mandatory site visit shall result in the disqualification of any offeror that does not have an authorized representative attend the entire duration of the mandatory site visit.
  - (h) At the discretion of the conducting procurement unit, audio or video recordings of pre-proposal conferences and site visits may be used.
    - (i) Listening to or viewing audio or video recordings of a mandatory pre-proposal conference or site visit may not be substituted for attendance. If the chief procurement officer or the head of a procurement unit with independent procurement authority grants an exception to the mandatory requirement in writing, the procurement unit may require all offerors that do not have an authorize representative in attendance for the entire pre-proposal conference or site visit to review any audio or video recording made.
- (2)(a) If a pre-proposal conference or site visit is held, the conducting procurement unit shall maintain:
- (i) an attendance log including the name of each attendee, the entity the attendee is representing, and the attendee's contact information;
  - (ii) minutes of the pre-proposal conference or site visit; and
  - (iii) copies of any documents distributed by the conducting procurement unit to the attendees at the pre-proposal conference or site visit.
- (b) The issuing procurement unit shall publish as an addendum to the solicitation:
- (i) the attendance log;
  - (ii) minutes of the pre-proposal conference or site visit;
  - (iii) copies of any documents distributed to attendees at the pre-proposal conference or site visit; and
  - (iv) any verbal modifications made to any of the solicitation documents. All verbal modifications to the solicitation documents shall be reduced to writing.

### **R33-7-301. Addenda to Request for Proposals.**

Addenda to the Request for Proposals may be made for the purpose of:

- (a) making changes to:
  - (i) the scope of work;
  - (ii) the schedule;
  - (iii) the qualification requirements;
  - (iv) the criteria;
  - (v) the weighting; or
  - (vi) other requirements of the Request for Proposal.

- (b) 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.
- (2) After the due date and time for submitting a response to Request for Proposals, at the discretion of the chief procurement officer or head of a procurement unit with independent procurement authority, 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 chief procurement officer or head of a procurement unit with independent procurement authority likely would have impacted the number of Offerors responding to the original publication of the Request for Proposals.

### **R33-7-402. Rejection of Late Proposals -- Delivery and Time Requirements.**

- (1) Except as provided in Subsection (4), an issuing procurement unit may not accept a proposal after the time for submission of a proposal has expired as set forth in Section 63G-6a-704(2).
- (2) When submitting a proposal 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 procurement unit will stop the process and the proposal will not be accepted.
- (3) When submitting 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 being late.
- (a) All proposals received by physical delivery will be date and time stamped by the procurement unit.
- (4) To the extent that an error on the part of the procurement unit or an employee of a procurement unit results in a proposal not being received by the established due date and time, the proposal shall be accepted as being on time.

### **R33-7-501. Evaluation of Proposals.**

- (1) The evaluation of proposals shall be conducted in accordance with Part 7 of the Utah Procurement Code.
- (2) An evaluation committee may ask questions of offerors to clarify proposals provided the questions are submitted and answered in writing. The record of questions and answers shall be maintained in the file.
- (3)(a) The evaluation of cost in an RFP shall be based on the entire term of the contract, excluding renewal periods.



- (b) Unless an exception is authorized in writing by the chief procurement officer or head of a procurement unit with independent procurement authority, cost should not be divided or evaluated on any other basis than the entire term of the contract, excluding renewal periods.
- (c) Whenever practicable, the evaluation of cost should include maintenance and service agreements, system upgrades, apparatuses, and other components associated with the procurement item.

### **R33-7-501.5. Minimum Score Thresholds.**

- (1) An executive branch conducting procurement unit shall establish minimum score thresholds to advance proposals from one stage in the RFP process to the next, including contract award.
- (2) Minimum score thresholds must be set forth in the RFP and clearly describe the minimum score threshold that proposals must achieve in order to advance to the next stage in the RFP process or to be awarded a contract.
- (3)(a) Thresholds may be based on:
  - (i) Minimum scores for each evaluation category;
  - (ii) The total of each minimum score in each evaluation category based on the total points available; or
  - (iii) A combination of (i) and (ii).
- (b) Thresholds may not be based on:
  - (i) A natural break in scores that was not defined and set forth in the RFP; or
  - (ii) A predetermined number of offerors.

### **R33-7-502. Voluntary Withdrawal of a Proposal.**

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

### **R33-7-601. Best and Final Offers.**

Best and Final Offers shall be conducted in accordance with the requirements set forth in Section 63G-6a-707.5, or the Utah Procurement Code. Rule R33-7 provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

- (1) The best and final offers (BAFO) process is an optional step in the evaluation phase of the request for proposals process in which offerors are requested to modify their proposals.
  - (a) An evaluation committee may request best and final offers when:
    - (i) no single proposal addresses all the specifications;

- (ii) all or a significant number of the proposals received are unclear and the evaluation committee requires further clarification;
  - (iii) additional information is needed in order for the evaluation committee to make a decision;
  - (iv) the differences between proposals in one or more categories are too slight to distinguish;
  - (v) all cost proposals are too high or over the budget;
  - (vi) multiple contract awards are necessary to achieve regional or statewide coverage for a procurement item under an RFP and there are insufficient cost proposals within the budget to award the number of contracts needed to provide regional or statewide coverage.
- (2) Only offerors meeting the minimum qualifications or scores described in the RFP are eligible to respond to best and final offers.
  - (3) Proposal modifications submitted in response to a request for best and final offers may only address the specific issues and/or sections of the RFP described in the request for best and final offers.
    - (a) Offerors may not use the best and final offers process to correct deficiencies in their proposals not addressed in the request for best and final offers issued by the procurement unit.
  - (4) 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.
    - (a) 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.
    - (b) A procurement unit shall ensure that auction tactics are not used in the discussion process, including discussing and comparing the costs and features of other proposals.
  - (5) 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 RFP process.
  - (6) A procurement unit may not use the best and final offers process to allow offerors a second opportunity to respond to the entire request for proposals.
  - (7) If a proposal modification is made orally during the interview or presentation process, the modification must be confirmed in writing.
  - (8) A request for best and final offers issued by a procurement unit shall:
    - (a) comply with all public notice requirements provided in Section 63G-6a-112;
    - (b) include a deadline for submission that allows offerors a reasonable opportunity for the preparation and submission of their responses;
    - (c) indicate how proposal modifications in response to a request for best and final offers will be evaluated;

- (9) If an offeror does not submit a best and final offer, its immediately previous proposal will be considered its best and final offer;
- (10) Unsolicited best and final offers will not be accepted from offerors.

**R33-7-701. Cost-benefit Analysis Exception: CM/GC.**

- (1) A cost-benefit analysis is not required if the contract is awarded solely on the qualifications of the construction manager/general contractor and the management fee described in Section 63G-6a-708 provided:
  - (a) a competitive process is maintained by the issuance of a request for proposals that requires the offeror to provide , at a minimum:
    - (i) a management plan;
    - (ii) references;
    - (iii) statements of qualifications; and
    - (iv) a management fee.
  - (b) the management fee contains only the following:
    - (i) preconstruction phase services;
    - (ii) monthly supervision fees for the construction phase; and
    - (iii) overhead and profit for the construction phase.
  - (c) 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.
  - (d) the contract awarded must be in the best interest of the procurement unit.

**R33-7-701.1. Cost-Benefit Analysis.**

- (1) A cost-benefit analysis conducted under Utah Code 63G-6a-708 shall be based on the entire term of the contract, excluding any renewal periods.

**R33-7-702. Only One Proposal Received.**

- (1) If only one proposal is received in response to a request for proposals, the evaluation committee shall score the proposal and:
  - (a) conduct a review to determine if:
    - (i) the proposal meets the minimum requirements;
    - (ii) pricing and terms are reasonable as set forth in R33-12-603 and R33-12-604; and
    - (iii) the proposal is in the best interest of the procurement unit.
  - (b) if the evaluation committee determines the proposal meets the minimum requirements, pricing and terms are reasonable, and the proposal is in the best

interest of the procurement unit, the procurement unit shall issue a justification statement as set forth in 63G-6a-708 and may make an award.

- (c) If an award is not made, the procurement unit may either cancel the procurement or resolicit for the purpose of obtaining additional proposals.

### **R33-7-703. Evaluation Committee Procedures for Scoring Non-Priced Technical Criteria.**

Evaluation committee members, employees of procurement units, and any other person involved in an RFP evaluation process are required to review Utah Code Title 63G-6a, Parts 7 and 24; and Section R33-7-703 prior to participating in the evaluation process.

- (1)(a) In accordance with Section 63G-6a-704, the conducting procurement unit may conduct a review of proposals to determine if:
- (i) the person submitting the proposal is responsible;
  - (ii) the proposal is responsive; and
  - (iii) the proposal meets the mandatory minimum requirements set forth in the RFP.
- (b) An evaluation committee may not evaluate proposals deemed non-responsive, not responsible or not meeting the mandatory minimum requirements of the RFP.
- (2)(a) Prior to the evaluation and scoring of proposals, an employee from the issuing procurement unit will meet with the evaluation committee, staff members of the conducting procurement unit, and any other person involved in the procurement process that may have access to the proposals to:
- (i) Explain the evaluation and scoring process;
  - (ii) Discuss requirements and prohibitions pertaining to:
    - (A) socialization with vendors as set forth in Section R33-24-104;
    - (B) financial conflicts of interest as set forth in Section R33-24-205;
    - (C) personal relationships, favoritism, or bias as set forth in Section R33-24-106;
    - (D) disclosing confidential information contained in proposals or the deliberations and scoring of the evaluation committee; and
    - (E) ethical standards for an employee of a procurement unit involved in the procurement process as set forth in Section R33-24-108.
  - (iii) review the scoring sheet and evaluation criteria set forth in the RFP; and
  - (iv) provide a copy of Section R33-7-703 to the evaluation committee, employees of the procurement unit involved in the procurement, and any other person that will have access to the proposals.
- (b) Prior to participating in any phase of the RFP 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 Section 63G-6a-707 and Section R33-24-107.

- (i) At each stage of the procurement process, the conducting procurement unit is required to ensure that evaluation committee members, employees of the procurement unit and any other person participating in the procurement process:
    - (A) do not have a conflict of interest with any of the offerors;
    - (B) do not contact or communicate with an offeror concerning the procurement outside the official procurement process; and
    - (C) conduct or participate in the procurement process in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.
- (3) Unless an exception is authorized by the head of the issuing procurement unit, the evaluation committee is prohibited from knowing, or having access to, any information relating to the cost, or the scoring of the cost, of a proposal until after the evaluation committee has finalized its scoring of non-price technical criteria for each proposal and submitted those scores to the issuing procurement unit as set forth in Section 63G-6a-707.
- (4)(a) In accordance with Section 63G-6a-707, the conducting procurement unit shall appoint an evaluation committee to evaluate each responsive and responsible proposal that has not been rejected from consideration under the provisions of the Utah Procurement Code, using the criteria described in the RFP.
  - (b) Using the provisions set forth in Section R33-7-705, the evaluation committee shall exercise independent judgement in the evaluation and scoring of the non-priced technical criteria in each proposal.
  - (c) Proposals must be evaluated solely on the criteria listed in the RFP. The evaluation committee shall assess each proposal's completeness, accuracy, and capability of meeting the technical criteria listed in the RFP.
  - (d) The evaluation committee may receive assistance from an expert or consultant authorized by the conducting procurement unit in accordance with the provisions set forth in Section 63G-6a-707(4).
  - (e) The evaluation committee may enter into discussions, conduct interviews with, or attend presentations by responsible offerors with responsive proposals that meet the mandatory minimum requirements of the RFP for the purpose of clarifying information contained in proposals in accordance with the provisions set forth in Section 63G-6a-707(5).
- (5) After each proposal has been independently evaluated by each member of the evaluation committee, each committee member independently shall assign a preliminary draft score for each proposal for each of the non-priced technical criteria listed in the RFP.
  - (a) After completing the preliminary draft scoring of the non-priced technical criteria for each proposal, the evaluation committee shall enter into deliberations to:
    - (i) review each evaluation committee member's preliminary draft scores;
    - (ii) resolve any factual disagreements;
    - (iii) modify their preliminary draft scores based on their updated understanding of the facts; and

- (iv) derive the committee's final recommended consensus score for the non-priced technical criteria of each proposal.
  - (b) During the evaluation process, the evaluation committee may make a recommendation to the conducting procurement unit that a proposal be rejected for being non-responsive, not responsible, not meeting the mandatory minimum requirements, or not meeting any applicable minimum score threshold.
  - (c) If an evaluation committee member does not attend an evaluation committee meeting, the meeting may be canceled and rescheduled.
  - (d) In order to score proposals fairly, an evaluation committee member must be present at all evaluation committee meetings and must review all proposals, including if applicable oral presentations. If an evaluation committee member fails to attend an evaluation committee meeting or leaves a meeting early or fails for any reason to fulfill the duties and obligations of a committee member, that committee member shall be removed from the committee. The remainder of the evaluation committee members may proceed with the evaluation, provided there are at least three evaluation committee members remaining.
    - (i) Attendance or participation on an evaluation committee via electronic means such as a conference call, a webcam, an online business application, or other electronic means is permissible.
- (6)(a) The evaluation committee shall derive its final recommended consensus score for the non-priced technical criteria of each proposal using the following methods:
- (i) the total of each individual evaluation committee member's scores for each proposal shall be the consensus score for the evaluation committee; or
  - (ii) an average of each individual evaluation committee member's scores for each proposal shall be the consensus score for the evaluation committee.
- (b) The evaluation committee shall submit its final score sheet, signed and dated by each committee member, to the issuing procurement unit for review.
- (7) The evaluation committee may not change its consensus final recommended scores of the non-priced technical criteria for each proposal after the scores have been submitted to the issuing procurement unit, unless the issuing procurement unit authorizes that a best and final offer process to be conducted under the provisions set forth in Section 63G-6a-707.5 and Section R33-7-601.
- (8) In accordance with Section 63G-6a-707, the issuing procurement unit shall:
- (a) review the evaluation committee's final recommended scores for each proposal's non-priced technical criteria and correct any errors, scoring inconsistencies, and reported noncompliance with this chapter or cancel the solicitation in accordance with Sections 63G-6a-106(4) or 63G-6a-303(3).
  - (b) score the cost of each proposal based on the applicable scoring formula; and
  - (c) calculate the total combined score for each proposal.
- (9) The evaluation committee may, with approval from the issuing procurement unit, request 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 RFP, under the circumstances set forth in Section 63G-6a-707.5 and Section R33-7-601.

- (10) The evaluation committee and the conducting procurement unit shall prepare a justification statement and any applicable cost-benefit analysis in accordance with Section 63G-6a-708.
- (11) The issuing procurement unit's role as a non-scoring member of the evaluation committee will be to facilitate the evaluation process within the guidelines of the Utah Procurement Code and applicable Rules.
- (12)(a) The head of the issuing procurement unit may remove a member of an evaluation committee for:
  - (i) having a conflict of interest or the appearance of a conflict of interest with a person responding to a solicitation;
  - (ii) having an unlawful bias or the appearance of unlawful bias for or against a person responding to a solicitation;
  - (iii) having a pattern of arbitrary, capricious, or clearly erroneous scores that are unexplainable or unjustifiable;
  - (iv) having inappropriate contact or communication with a person responding to a solicitation;
  - (v) socializing inappropriately with a person responding to a solicitation;
  - (vi) engaging in any other action or having any other association that causes the head of the issuing procurement unit to conclude that the individual cannot fairly evaluate a solicitation response; or
  - (vii) any other violation of a law, rule, or policy.
- (b) The head of the issuing procurement unit may reconstitute an evaluation committee in any way deemed appropriate to correct an impropriety described in Subsection (12)(a). If an impropriety cannot be cured by replacing a member, the head of the issuing procurement unit may appoint a new evaluation committee, cancel the procurement or cancel and reissue the procurement.

#### **R33-7-704. Scoring of Evaluation Criteria, Other Than Cost, for Proposals Meeting Mandatory Minimum Requirements.**

- (1) The scoring of evaluation criteria, other than cost, for proposals meeting the mandatory minimum requirements in an RFP shall be based on a one through five point scoring system.
- (2) Points shall be awarded to each applicable evaluation category as set forth in the RFP, including but not limited to:
  - (a) Technical specifications;
  - (b) Qualifications and experience;
  - (c) Programming;
  - (d) Design;

- (e) Time, manner, or schedule of delivery;
  - (f) Quality or suitability for a particular purpose;
  - (g) Financial solvency;
  - (h) Management and methodological plan; and
  - (i) Other requirements specified in the RFP.
- (3) Scoring Methodology:
- (a) Five points (Excellent): The proposal addresses and exceeds all of the requirements described in the RFP;
  - (b) Four points (Very Good): The proposal addresses all of the requirements described in the RFP and, in some respects, exceeds them;
  - (c) Three points (Good): The proposal addresses all of the requirements described in the RFP in a satisfactory manner;
  - (d) Two points (Fair): The proposal addresses the requirements described in the RFP in an unsatisfactory manner; or
  - (e) One point (Poor): The proposal fails to address the requirements described in the RFP or it addresses the requirements inaccurately or poorly.

**R33-7-705. Evaluation Committee Members Required to Exercise Independent Judgment.**

- (1)(a) Evaluators are required to exercise independent judgment in a manner that is not dependent on anyone else's opinions or wishes.
  - (b) 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.
  - (c) Evaluators may seek to increase their knowledge before scoring by asking questions and seeking appropriate information from the conducting procurement unit or issuing procurement unit. Otherwise, evaluators should not discuss proposals or the scoring of proposals with other persons not on the evaluation committee.
- (2)(a) 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.
- (b) 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.
  - (c) Evaluators are required to report any attempts by others to improperly influence their scoring to favor or disfavor a particular offeror.
  - (d) If an evaluator feels that the evaluator's independence has been compromised, the evaluator must recuse himself or herself from the evaluation process.



### **R33-7-802. Publicizing Awards.**

- (1) In addition to the requirements of Section 63G-6a-709.5, the following shall be disclosed after receipt of a GRAMA request and payment of any lawfully enacted and applicable fees:
  - (a) 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 under Section R33-7-105;
  - (b) the unsuccessful proposals, except for those portions that are to be non-disclosed under Section R33-7-105;
  - (c) the rankings of the proposals;
  - (d) the names of the members of any selection committee (reviewing authority);
  - (e) 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.
  - (f) the written justification statement supporting the selection, except for those portions that are to be non-disclosed under Section R33-7-105.
- (2) After due consideration and public input, the following has been determined by the Procurement Policy Board to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, and will not be disclosed by the governmental entity at any time to the public including under any GRAMA request:
  - (a) the names of individual scorers/evaluators in relation to their individual scores or rankings;
  - (b) any individual scorer's/evaluator's notes, drafts, and working documents;
  - (c) non-public financial statements; and
  - (d) past performance and reference information, which is not provided by the offeror and which is obtained as a result of the efforts of the governmental entity. To the extent such past performance or reference information is included in the written justification statement; it is subject to public disclosure.

**KEY: government purchasing, request for proposals, standard procurement process**

**Date of Enactment or Last Substantive Amendment: August 22, 2016**

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**Authorizing, Implemented, or Interpreted Law: 63G-6a**

## **R33. Administrative Services, Purchasing and General Services.**

### **R33-8. Exceptions to Procurement Requirements.**

#### **R33-8-101. Award of Contract Without Engaging in a Standard Procurement Process.**

- (1) Under the provisions set forth in Section 63G-6a-802, the chief procurement officer or head of a procurement unit with independent procurement authority may award a contract without engaging in a standard procurement process under the following circumstances:
  - (a) There is only one source for the procurement item;
  - (b) Transitional costs are a significant consideration in selecting a procurement item and the results of a cost-benefit analysis document that transitional costs are unreasonable or cost-prohibitive and awarding a contract without engaging in a standard procurement process is in the best interest of the procurement unit; or
  - (c) Other circumstances described by the applicable rulemaking authority that make awarding a contract through a standard procurement process impractical and not in the best interest of the procurement unit.

#### **R33-8-101a. Sole Source Contract Awards.**

- (1) The underlying purposes and policies of the Utah Procurement Code are to ensure the fair and equitable treatment of all persons who deal with the procurement system and to foster effective broad-based competition within the free enterprise system. The most effective way to achieve this is by conducting a standard procurement process whenever public funds are expended for a procurement item. Sole source contract awards do not involve a standard procurement process and should only be used when justified after reasonable research has been conducted to determine if there are other available sources and an analysis has been conducted to determine if a sole source award is cost justified.
- (2) Circumstances for which a sole source contract award may be justified include procurements for:
  - (a) A procurement item for which there is no comparable product or service, such as a one-of-a-kind item available from only one vendor;
  - (b) A component or replacement part for which there is no commercially available substitute, and which can be obtained only directly from the manufacturer; or
  - (c) An exclusive maintenance, service, or warranty agreement.
- (3) Prior to awarding a sole source contract, the chief procurement officer or head of a procurement unit with independent procurement authority shall, whenever practicable, conduct a price analysis in accordance with Section R33-12-603.
- (4) An urgent or unexpected circumstance or requirement for a procurement item does not justify the award of a contract without engaging in a standard procurement process.

### **R33-8-101b. Transitional Costs -- Cost-Benefit Analysis.**

- (1) For the purpose of this section, the following definitions shall apply:
  - (a) "Competing type of procurement item" means a type of procurement item that is the same, equivalent, or superior to the existing type of procurement item currently under contract in all material aspects including:
    - (i) performance;
    - (ii) specifications;
    - (iii) scope of work; and
    - (iv) provider qualifications, certifications, and licensing.
  - (b) "Competing provider" means another provider other than the existing provider under contract that provides a competing type of procurement item.
  - (c) "Significant", "unreasonable or cost-prohibitive" transitional costs are defined as costs associated with changing from an existing provider of a procurement item to another provider of that procurement item or from an existing type of procurement item to another type that:
    - (i) constitute a measurably large amount that would likely have an influence or effect on the award of a contract if a competitive procurement were to be conducted for the procurement item being considered; and
    - (ii) provides a compelling justification for not conducting a competitive standard procurement process.
- (2) Transitional costs that must be considered in a cost-benefit analysis include:
  - (a) Costs that are directly associated with changing from an existing provider of a procurement item to a competing provider of that procurement item or from an existing type of procurement item to a competing type of procurement item; and
  - (b) A full lifecycle cost analysis of the existing type of procurement item and competing type of procurement items in order to determine which procurement item is more cost-effective.
- (3) Transitional costs that may be considered in a cost-benefit analysis include:
  - (a) Costs identified in Subsection 63G-6a-103(95)(b);
  - (b) Costs offered by a competing provider(s) for a competing type of procurement item in a competitive bid or RFP process conducted within the last 12 months;
  - (c) Costs offered by a competing provider(s) for a competing type of procurement item in a competitive bid or RFP process conducted prior to the most recent 12 months, updated using an applicable price index;
  - (d) Written cost estimates obtained by the conducting procurement unit from a competing provider(s) for a competing type of procurement item; and
  - (e) Other transitional costs determined to be applicable by the chief procurement officer or head of a procurement unit with independent procurement authority.

- (4) Transitional costs or other information that may not be considered in a cost-benefit analysis include:
  - (a) Costs prohibited in Subsection 63G-6a-103(95)(c);
  - (b) Data provided by the existing provider for the purpose of establishing:
    - (i) the market value of the existing type of procurement item; or
    - (ii) a competing provider's price for a competing type of procurement item;
  - (c) Costs associated with any other procurement item other than the existing type of procurement item or a competing type of procurement item;
  - (d) Non-monetary factors, such as the provider's performance, agency preference, and other data or information not specific to the transitional costs associated with the existing type of procurement item or a competing type of procurement item;
  - (e) Factors other than the monetary transitional costs directly associated with changing from an existing provider of a procurement item to a competing provider of that procurement item or from an existing type of procurement item to a competing type of procurement item; and
  - (f) Other transitional costs or other information deemed inappropriate by the chief procurement officer or head of a procurement unit with independent procurement authority.
- (5) The conducting procurement unit shall complete a written cost-benefit analysis and submit it to the issuing procurement unit for approval.
- (6) The cost-benefit analysis should not be overly time-consuming to complete or involve hiring costly consultants or financial analysts.

**R33-8-101c. Other Circumstances That May Make Awarding a Contract Through a Standard Procurement Process Impractical.**

- (1) In accordance with Section 63G-6a-802(1)(c), the chief procurement officer or head of a procurement unit with independent procurement authority may consider, as applicable, the following circumstances when making a determination as to whether awarding a contract through a standard procurement process is impractical and not in the best interest of the procurement unit:
  - (a) a contract award to a specific supplier, service provider, or contractor is a condition of a donation or grant that will fund the full cost of the supply, service, or construction item;
  - (b) public utility services, when only one public utility service is available in an area;
  - (c) an item where compatibility is the overriding consideration; or
  - (d) a used procurement item that presents a unique, specialized, or time-limited buying opportunity.

**R33-8-101d. Notice of Intent to Award a Contract Without Engaging in a**

### **Standard Procurement Process.**

- (1)(a) The division shall make available a Form titled: "Notice of intent to award a contract without engaging in a standard procurement process" that requires the conducting procurement unit to provide, at a minimum, the following information:
- (i) a description of the procurement item, including, when applicable, the proposed scope of work;
  - (ii) the total dollar value of the procurement item, including, when applicable, the actual or estimated full lifecycle cost of maintenance and service agreements;
  - (iii) the duration of the proposed contract;
  - (iv) the signature of an authorized official of the conducting procurement unit; and
  - (v) research completed by the conducting procurement unit documenting that:
    - (A) There are no other competing vendors or sources for the procurement item in accordance with the provisions set forth in Section R33-8-101a;
    - (B) Transitional costs are a significant consideration in selecting a procurement item and the results of a cost benefit analysis documenting that transitional costs are unreasonable or cost-prohibitive and awarding a contract without engaging in a standard procurement process is in the best interest of the procurement unit in accordance with the provisions set forth in Section R33-8-101b; or
    - (C) Other circumstances that make awarding a contract through a standard procurement process impractical and not in the best interest of the procurement unit in accordance with the provisions set forth in Section R33-8-101c.
- (b) A procurement unit with independent procurement authority may use the division's Form or develop its own Form to provide notice of intent to award a contract without engaging in a standard procurement process that contains, at a minimum, the same basic information in Subsection (1)(a).
- (c) The conducting procurement unit shall submit in writing a completed "Notice of intent to award a contract without engaging in a standard procurement process" to the chief procurement officer, or head of a procurement unit with independent procurement authority for approval.

### **R33-8-101e. Public Notice -- Waiver of Public Notice.**

- (1) Except as provided in Subsection (2), publication of a "Notice of intent to award a contract without engaging in a standard procurement process" shall be published in accordance with Section 63G-6a-112 if the cost of the procurement being considered under this rule exceeds \$50,000.
- (2)(a) When making a determination under Sections R33-8-101a, 101b, or 101c, the chief procurement officer or head of a procurement unit with independent procurement

authority may waive the requirement to publish the "Notice of intent to award a contract without engaging in a standard procurement process" for the following procurements:

- (i) procurements of \$50,000 or less;
  - (ii) public utility services;
  - (iii) conference and convention facilities with unique or specialized amenities, abilities, location, or services;
  - (iv) conference fees, including materials;
  - (v) membership dues;
  - (vi) speakers or trainers with unique or proprietary presentations or training materials;
  - (vii) hosting of in-state, out-of-state, and international dignitaries;
  - (viii) international, national, or local promotion of the state or a public entity,
  - (ix) an award when the Legislature identifies the intended recipient of a contract;
  - (x) an award to a specific supplier, service provider, or contractor if the award is a condition of a donation or grant that will fund the full cost of the supply, service, or construction item;
  - (xi) catering services at government functions where the event requires a caterer with unique and specialized qualifications, skills, and abilities; or
  - (xii) other circumstances as determined in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority.
- (b) The chief procurement officer or head of a procurement unit with independent procurement authority may require publication of a "Notice of intent to award a contract without engaging in a standard procurement process" for any procurement identified in Subsection (2)(a) if deemed necessary to uphold the fair and equitable treatment of all persons who deal with the procurement system.

### **R33-8-101f. Contesting a Notice of Intent to Award a Contract Without Engaging in a Standard Procurement Process.**

- (1) A person may contest the notice of intent to award a contract without engaging in a standard procurement process prior to the closing of the public notice period set forth in Section 63G-6a-112 by submitting the following information in writing to the chief procurement officer or head of a procurement unit with independent procurement authority:
- (a) the name of the contesting person; and
  - (b) a detailed explanation of the challenge, including documentation that:
    - (i) there are other competing sources for the procurement item;
    - (ii) transitional costs are not significant, unreasonable, or cost-prohibitive; or

- (iii) conducting a standard procurement process is in the best interest of the conducting procurement unit.
- (2) Upon receipt of a challenge contesting an award of a contract without engaging in a standard procurement process, the chief procurement officer or the head of a procurement unit with independent procurement authority shall conduct an investigation to determine the validity of the challenge and make a written determination either supporting or denying the challenge.
  - (a) If a challenge is upheld, the conducting procurement unit shall conduct a standard procurement process for the procurement item being considered or cancel the procurement;
  - (b) If a challenge is not upheld, the conducting procurement unit may proceed with awarding a contract without engaging in a standard procurement process.
- (3) A vendor's right to file a protest under Title 63G, Chapter 6a; Part 16, is not waived by a vendor's actions to contest or challenge a procurement unit's notice of intent to award a contract without engaging in a standard procurement process under Section R33-8-101f.

#### **R33-8-102. Adding Additional Funds to a Contract.**

- (1) Adding funds to an existing contract constitutes an expenditure of public funds without competition and is an exception to the standard procurement process. Two of the purposes of the Utah Procurement Code identified in Section 63G-6a-102 are to ensure the fair and equitable treatment of all persons who deal with the procurement system; and to provide increased economy in state procurement activities. In order to achieve these competing objectives, when adding additional funds to a contract, the following provisions shall apply to executive branch procurement units:
  - (a) Up to 25 percent in additional funds may be added to the initial total amount of a contract issued and conducted by an executive branch procurement unit if, after reviewing the applicable laws and rules, the chief procurement officer or head of a procurement unit with independent procurement authority approves adding the additional funds.
  - (b) Over 25 percent in additional funds may be added to the initial total amount of a contract issued and conducted by an executive branch procurement unit if approved by the chief procurement officer or head of an executive branch procurement unit with independent procurement authority and the Attorney General's Office. The approval from the Attorney General's Office shall include a written determination that adding the additional funds does not violate state or federal antitrust laws and is consistent with the purpose of ensuring the fair and equitable treatment of all persons who deal with the procurement system.
  - (c) Explicit statutory authorization to add additional funds to a specific existing contract issued and conducted by an executive branch agency overrides subsections (a) and (b).

- (d) Additional funds may only be added to an existing contract for the procurement item(s) identified in the scope of work or procurement specifications set forth in the solicitation and resulting contract.

**R33-8-110. Extension of a Contract Without Engaging in a Standard Procurement Process.**

- (1) One of the underlying purposes and policies of the Utah Procurement Code is to ensure the fair and equitable treatment of all persons who deal with the procurement system and to foster effective broad-based competition within the free enterprise system. The most effective way to achieve this is by conducting a standard procurement process whenever public funds are expended for a procurement item. A contract extension does not involve a standard procurement process and should only be used after thorough analysis and proper justification.
- (2) Pursuant to Section 63G-6a-103, "contract administration" is a duty of the conducting procurement unit and includes all functions, duties, and responsibilities associated with closing out a contract. In fulfillment of these duties, the conducting procurement unit shall maintain a process or system for tracking contract expiration dates in order to determine well in advance of a contract expiration date if there is a continuing need for the procurement item. If the conducting procurement unit determines there is a continuing need for the procurement item, the conducting procurement unit shall whenever practicable:
  - (a)(i) Initiate a standard procurement process no later than 90 days prior to the contract expiration date of an existing contract; and
  - (ii) No later than 45 days prior to the contract expiration date, publish, if applicable, a solicitation for the procurement item; or
  - (b)(i) If the conducting procurement unit determines that a procurement will be complex or involve a change in industry standards or new specifications requiring negotiations, no later than 180 days prior to the contract expiration date, initiate a standard procurement process; and
  - (ii) No later than 45 days prior to the contract expiration date, publish, if applicable, a solicitation for the procurement item.
- (3) The following do not justify an extension of a contract under Section 63G-6a-802.7:
  - (a) A procurement unit's intentional delay in conducting a standard procurement process to award a contract to replace an expiring contract; and
  - (b) A procurement unit or vendor's intentional delay in executing a contract to replace an expiring contract.
- (4) Improperly avoiding engaging in a standard procurement process in order to extend the duration of a vendor's existing contract through means of a contract extension, may be classified as "steering a contract to a favored vendor" which is reportable as unlawful conduct under Section 63G-6a-2407.



### **R33-8-201. Trial Use or Testing of a Procurement Item, Including New Technology.**

The trial use or testing of a procurement item, including new technology, shall be conducted as set forth in Section 63G-6a-802.3, Utah Procurement Code.

### **R33-8-301. Reserved.**

Reserved.

### **R33-8-401. Emergency Procurement.**

- (1) Emergency procurements shall be conducted in accordance with the requirements set forth in Section 63G-6a-803, and this rule.
- (2) An emergency procurement is a procurement procedure where the procurement unit is authorized to obtain a procurement item without using a standard competitive procurement process.
- (3) An emergency procurement may only be used when circumstances create harm or risk of harm to public health, welfare, safety, or property.
  - (a) Circumstances that may create harm or risk to health, welfare, safety, or property include:
    - (i) damage to a facility or infrastructure resulting from flood, fire, earthquake, storm, or explosion;
    - (ii) failure or eminent failure of a public building, equipment, road, bridge or utility;
    - (iii) terrorist activity;
    - (iv) epidemics;
    - (v) civil unrest;
    - (vi) events that impair the ability of a public entity to function or perform required services;
    - (vii) situations that may cause harm or injury to life or property; or
    - (viii) other conditions as determined in writing by the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority.
- (4) Emergency procurements are limited to those procurement items necessary to mitigate the emergency.
- (5) While a standard procurement process is not required under an emergency procurement, when practicable, procurement units should seek to obtain as much competition as possible through use of phone quotes, internet quotes, limited invitations to bid, or other selection methods while avoiding harm, or risk of harm, to the public health, safety, welfare, property, or impairing the ability of a public entity to function or perform required services.

- (6) The procurement unit shall make a written determination documenting the basis for the emergency and the selection of the procurement item. A record of the determination and selection shall be kept in the contract file. The documentation may be made after the emergency condition has been alleviated.

**R33-8-501. Declaration of "Official State of Emergency".**

Upon a declaration of an "Official State of Emergency" by the authorized state official, the chief procurement officer shall implement the division's Continuity of Operations Plan, or COOP. When activated, the division shall follow the procedures outlined in the plan and take appropriate actions as directed by the procurement unit responsible for authorizing emergency acquisitions of procurement items.

**KEY: government purchasing, exceptions to procurement requirements, emergency procurement**

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## **R33. Administrative Services, Purchasing and General Services.**

### **R33-9. Cancellations, Rejections, and Debarment.**

#### **R33-9-101. General Provisions.**

- (1) An Invitation for Bids, a Request for Proposals, or other solicitation may be canceled prior to the deadline for receipt of bids, proposals, or other submissions, when it is in the best interests of the procurement unit as determined by the procurement unit. In the event a solicitation is cancelled, the reasons for cancellation shall be made part of the procurement file and shall be available for public inspection and the procurement unit shall:
  - (a) re-solicit new bids or proposals using the same or revised specifications; or,
  - (b) withdraw the requisition for the procurement item(s).

#### **R33-9-102. Re-solicitation.**

- (1) In the event there is no initial response to an initial solicitation, the chief procurement officer or head of a procurement unit with independent procurement authority may:
  - (a) contact the known supplier community to determine why there were no responses to the solicitation;
  - (b) research the potential vendor community; and,
  - (c) based upon the information in (a) and (b) require the conducting procurement unit to modify the solicitation documents.
- (2) If the conducting procurement unit has modified the solicitation documents and after the re-issuance of a solicitation, there is still no competition or there is insufficient competition, the chief procurement officer or head of a procurement unit with independent procurement authority, shall:
  - (a) require the conducting procurement unit to further modify the procurement documents; or,
  - (b) cancel the requisition for the procurement item(s).

#### **R33-9-103. Cancellation Before Award.**

- (1) When it is determined before award but after opening that the specifications, scope of work or other requirements contained in the solicitation documents were not met by any bidder or offeror the solicitation shall be cancelled.
- (2) A solicitation may be cancelled before award but after opening all bids or offers when the procurement unit determines in writing that an infraction of code, rule, or policy has occurred or that there is other good cause including:
  - (a) inadequate, erroneous, or ambiguous specifications or requirements were cited in the solicitation;

- (b) the specifications in the solicitation have been or must be revised;
- (c) the procurement item(s) being solicited are no longer required;
- (d) the solicitation did not provide for consideration of all factors of cost to the procurement unit, such as cost of transportation, warranties, service and maintenance;
- (e) bids or offers received indicate that the needs of the procurement unit can be satisfied by a less expensive procurement item differing from that in the solicitation;
- (f) except as provided in Section 63G-6a-607, all otherwise acceptable bids or offers received are at unreasonable prices, or only one bid or offer is received and the chief procurement officer or head of a procurement unit with independent procurement authority cannot determine the reasonableness of the bid price or cost proposal;
- (g) the responses to the solicitation were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or,
- (h) no responsive bid or offer has been received from a responsible bidder or offer;

#### **R33-9-104. Alternative to Cancellation.**

In the event administrative difficulties are encountered before award but after the deadline for submissions that may delay award beyond the bidders' or offerors' acceptance periods, the bidders or offerors 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.

#### **R33-9-201. Rejections and Debarments.**

An issuing procurement unit may reject any or all bids, offers or other submissions, in whole or in part, as may be specified in the solicitation, when it is in the best interest of the procurement unit. In the event of a rejection of any or all bids, offers or other submissions, in whole or in part, the reasons for rejection shall be made part of the procurement file and shall be available for public inspection.

#### **R33-9-202. Conformity to Solicitation Requirements.**

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

- (2) A bid or offer shall be rejected when the bidder or offeror imposes conditions or takes exceptions that would modify requirements or terms and conditions of the solicitation or limit the bidder or offeror's liability to the procurement, since to allow the bidder or offeror to impose such conditions or take exceptions would be prejudicial to other bidders or offerors. For example, bids or offers shall be rejected in which the bidder or offeror:
- (a) for commodities, protects against future changes in conditions, such as increased costs, if total possible costs to the procurement unit cannot be determined;
  - (b) 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;
  - (c) when not authorized by the solicitation, conditions or qualifies a bid by stipulating that it is to be considered only if, before date of award, the bidder or offeror receives (or does not receive) an award under a separate solicitation;
  - (d) requires that the procurement unit is to determine that the bidder or offeror's product meets applicable specifications; or
  - (e) limits rights of the State under any contract clause.
- (3) A bidder or offeror may be requested to delete objectionable conditions from a bid or offer provided doing so is not prejudicial to other bidders or offerors, 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 or offer where it affects price, quantity, quality, or delivery of the procurement item(s) offered.

### **R33-9-203. Unreasonable or Unbalanced Pricing.**

- (1)(a) Any bid or offer may be rejected if the chief procurement officer or head of a procurement unit with independent procurement authority determines in writing that it is unreasonable as to price. Unreasonableness of price includes not only the total price of the bid or offer, but the prices for individual line items as well.
- (b) Any bid or offer 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:
- (i) startup work, mobilization, procurement item sample production or testing are separate line items;
  - (ii) base quantities and option quantities are separate line items; or
  - (iii) The evaluated price is the aggregate of estimated quantities to be ordered under separate line items of an indefinite-delivery contract.

- (c) All bids or offers 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 procurement unit shall:
  - (i) consider the risks to the procurement unit associated with the unbalanced pricing in determining the competitive range and in making the source selection decision; and
  - (ii) consider whether award of the contract will result in paying unreasonably high prices for contract performance.
- (d) A bid or offer may be rejected if the procurement unit and the chief procurement officer or head of a procurement unit with independent procurement authority determine that the lack of balance poses an unacceptable risk to the State.

**R33-9-204. Rejection for Nonresponsibility or Nonresponsiveness.**

- (1) Subject to Section 63G-6a-903, the chief procurement officer or head of a procurement unit with independent procurement authority shall reject a bid or offer from a bidder or offeror determined to be nonresponsible. A responsible bidder or offeror is defined in Section 63G-6a-103(42).
- (2) In accordance with Section 63G-6a-604(3) the chief procurement officer or head of a procurement unit with independent procurement authority may not accept a bid that is not responsive. Responsiveness is defined in Section 63G-6a-103(43).
- (3) When a bid security is required and a bidder fails to furnish the security in accordance with the requirements of the invitation for bids, the bid shall be rejected.
- (4) The originals of all rejected bids, offers, or other submissions, and all written findings with respect to such rejections, shall be made part of the procurement file and available for public inspection.

**R33-9-301. Rejection for Suspension/Debarment.**

Bids, offers, or other submissions, received from any person that is suspended, debarred, or otherwise ineligible as of the due date for receipt of bids, proposals, or other submissions shall be rejected.

**KEY: government purchasing, cancellations, rejections, debarment**  
**Date of Enactment or Last Substantive Amendment: August 22, 2016**  
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## **R33. Administrative Services, Purchasing and General Services.**

### **R33-10. Preferences.**

#### **R33-10-101. Providers of State Products.**

- (1) In addition to the reciprocal preference requirements contained in Section 63G-6a-1002 for the providers of procurement items produced, manufactured, mined, grown, or performed in Utah, Rule R33-10 outlines the process for award of a contract when there is more than one equally low preferred bidder. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.
- (2) In the event there is more than one equally low preferred bidder, the chief procurement officer or head of a procurement unit with independent procurement authority shall consider the preferred bidders as tie bidders and shall follow the process specified in Section 63G-6a-608 and Rule R33-6-110.

#### **R33-10-102. Preference for Resident Contractors.**

- (1) In addition to the reciprocal preference requirements contained in Section 63G-6a-1003 for resident Utah contractors, this rule outlines the process for award of a contract when there is more than one equally low preferred resident contractor.
- (2) In the event there is more than one equally low preferred resident contractor, the chief procurement officer or head of a procurement unit with independent procurement authority shall consider the preferred resident contractors as tie bidders and shall follow the process specified in Section 63G-6a-608 and Rule R33-6-110.

**KEY: preferences for resident contractors, reciprocal preferences, state products**

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## **R33. Administrative Services, Purchasing and General Services.**

### **R33-11. Form of Bonds.**

#### **R33-11-101. Definitions.**

- (1)(a) Whenever used in this Rule, the terms "bid", "bidder" and "bid security" apply to all procurements, including non-construction procurements, when the procurement documents, regardless of the procurement type, require securities and/or bonds.
- (b) All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

#### **R33-11-201. Bid Security Requirements for Projects.**

- (1) Invitations for Bids and Requests for Proposals for construction contracts estimated to exceed \$50,000 shall require the submission of bid bond in an amount equal to at least 5% of the bid, at the time the bid is submitted.
- (2) Invitations for Bids and Requests for Proposals for other procurements may require the submission of a bid security, including specifications for the form and type of bid security, when the chief procurement officer or the head of a procurement unit with independent procurement authority determines it is in the best interest of the procurement unit
- (3) If a person fails to include the required bid security, the bid shall be deemed nonresponsive and ineligible for consideration of award except as provided by Rule R33-6-108, Rule R33-6-109 or Rule R33-11-202(2).
- (4) The chief procurement officer or head of a procurement unit with independent procurement authority may require an acceptable bid security on projects that are for amounts less than the standard amount set forth in Rule R33-11-201(1).

#### **R33-11-202. Acceptable Bid Security Not Furnished.**

- (1) If acceptable bid security is not furnished, the bid shall be rejected as nonresponsive, unless the failure to comply is determined by the chief procurement officer or head of a procurement unit with independent procurement authority to be nonsubstantial. Failure to submit an acceptable bid security may be deemed nonsubstantial if:
  - (a) the bid security is submitted on a form other than the required bid bond form and the bid security meets all other requirements including being issued by a surety meeting the requirements of Rule R33-11-304(b) and the contractor provides acceptable bid security by the close of business of the next succeeding business day after the procurement notified the contractor of the defective bid security; or
  - (b) only one bid is received, and there is not sufficient time to re-solicit; or



- (c) the amount of the bid security submitted, though less than the amount required by the Invitation for Bids, is equal to or greater than the difference in the price stated in the next higher acceptable bid; or
  - (d) the bid security becomes inadequate as a result of the correction of a mistake in the bid or bid modification in accordance with Rule R33-6-108 (Mistakes in Bids) or Rule R33-7-401 (Mistakes in Proposals) Rule R33-7-402 (Correction of Mistakes), if the bidder increases the amount of guarantee to required limits within 48 hours after the bid opening.
- (2) If the successful bidder fails or refuses to enter into the contract or furnish the additional bonds required under Rule R33-11-2, then the bidder's bid security may be forfeited.

### **R33-11-301. Performance Bonds for Construction Contracts.**

A performance bond is required for all construction contracts in excess of \$50,000, in the amount of 100% of the contract price. The performance bond shall be delivered by the contractor to the procurement unit within fourteen days of the contractor receiving notice of the award of the construction contract. If a contractor fails to deliver the required performance bond, the contractor's bid/offer shall be rejected, its bid security may be enforced, and award of the contract may be made to the next lowest responsive and responsible bidder or highest ranked offeror.

### **R33-11-302. Surety or Performance Bonds for Non-construction Procurement Items.**

- (1) A surety or performance bond may be required on any non-construction contract by the chief procurement officer or head of a procurement unit with independent procurement authority deems necessary to guarantee the satisfactory completion of a contract, provided:
- (a) The Invitation for Bids or Request for Proposals contains a statement that a surety or performance bond is required in an amount:
    - (i) equal to the amount of the bid or offer;
    - (ii) equal to the project budget or estimated project cost, if the budget or estimated project cost is published in the solicitation documents;
    - (iii) equal to the previous contract cost, if the previous contract cost is published in the solicitation documents; or
    - (iv) The Invitation for Bids or Request for Proposals contains a statement that a surety or performance bond, in an amount less than the amounts contained in (a), is required; and
  - (b) The Invitation for Bids or Request for Proposals contains a detailed description of the work to be performed for which the surety or performance bond is required.
- (2) Surety or Performance Bonds should not be used to unreasonably eliminate competition or be of such unreasonable value as to eliminate competition.

### **R33-11-303. Payment Bonds.**

A payment bond is required for all construction contracts in excess of \$50,000, in the amount of 100% of the contract price. If a contractor fails to deliver the required payment bond, the contractor's bid or offer shall be rejected, its bid security may be enforced, and award of the contract shall be made to the next lowest responsive and responsible bidder or highest ranked offeror.

For executive branch procurement units:

- (a) Bid Bonds, Payment Bonds and Performance Bonds submitted by vendors to executive branch procurement units must be from sureties meeting the requirements of Rule R33-11-304 (b) and must be on the required bond forms;
  - (b) Surety firm requirements. All surety firms must be authorized to do business in the State of Utah and be listed in the U.S. Department of the Treasury Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies for an amount not less than the amount of the bond to be issued.
- (1) The chief procurement officer, or head of a procurement unit with independent procurement authority, may waive any bonding requirement if it is determined in writing by the chief procurement officer or head of a procurement unit with independent procurement authority that:
- (a) bonds cannot reasonably be obtained for the work involved;
  - (b) the cost of the bond exceeds the risk to the procurement unit; or
  - (c) bonds are not necessary to protect the interests of the procurement unit.
- (2) If the conducting procurement unit fails to obtain a payment bond it may subject Title 14, Chapter 1.

**KEY: bid security, performance bonds, payment bonds, procurement procedures**

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**R33. Administrative Services, Division of Purchasing and General Services.  
R33-12. Terms and Conditions, Contracts, Change Orders and Costs.**

**R33-12-101. Required Contract Clauses.**

Public entities shall comply with Section 63G-6a-1202 considering clauses for contracts. Executive branch procurement units shall also comply with the requirements of Section 63G-6a-110(6). All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

**R33-12-201. Establishment of Terms and Conditions.**

- (1) Executive branch procurement units without independent procurement authority shall be required to use the Standard Terms and Conditions adopted by the division for each particular procurement, unless exceptions or additions are granted by the Chief Procurement Officer after consultation with the Attorney General's Office. Public entities, other than executive branch procurement units, may enact similar requirements. Terms and conditions may be established for:
  - (a) a category of procurement items;
  - (b) a specific procurement item;
  - (c) general use in all procurements;
  - (d) the special needs of a conducting procurement unit; or
  - (e) the requirements of federal funding.
- (2) In addition to the required standard terms and conditions, executive branch procurement units without independent procurement authority may submit their own additional special terms and conditions subject to the following:
  - (a) the chief procurement officer may reject terms and conditions submitted by a conducting procurement unit if:
    - (i) the terms and conditions are unduly restrictive;
    - (ii) will unreasonably increase the cost of the procurement item; or
    - (iii) places the state at increased risk.
  - (b) the chief procurement officer may require the conducting procurement unit's Assistant Attorney General to approve any additional special terms and conditions.

**R33-12-301. Awarding Multiple Award Contracts.**

- (1) A multiple award contract is a procurement process where two or more bidders or offerors are awarded a contract under a single solicitation. Purchases are made through an order placed with a vendor on multiple award contract pursuant to the procedures established in R33-12-301.2, ordering from a multiple award contract.

- (2) As authorized under Section 63G-6a-1204.5, the division or a procurement unit with independent procurement authority may enter into multiple award contracts.
- (3) A multiple award contract may be awarded under a single solicitation when two or more bidders or offerors for similar procurement items are needed for:
  - (a) Coverage on a statewide, regional, combined statewide and regional basis, agency specific requirement, or other criteria specified in the solicitation such as:
    - (i) delivery;
    - (ii) service;
    - (iii) product availability; or
    - (iv) Compatibility with existing equipment or infrastructure.
- (4) In addition to the requirements set forth in Section 63G-6a-603 and Section 63G-6a-703, when it is anticipated that a procurement will result in multiple contract awards, the solicitation shall include a statement that:
  - (a) Indicates that contracts may be awarded to more than one bidder or offeror;
  - (b) Specifies whether contracts will be awarded on a statewide, regional, combined statewide and regional basis, or agency specific requirement; and
  - (c) Describes specific methodology or a formula that will be used to determine the number of contract awards.
- (5) Multiple award contracts in an invitation for bids shall be conducted and awarded in accordance with Utah Code 63G-6a, Part 6 to the lowest responsive and responsible bidder(s) who meet the objective criteria described in the invitation for bids and may be awarded to provide adequate regional, statewide, or combined regional and statewide coverage, agency specific requirement, or delivery, or product availability using the following methods:
  - (a) lowest bids for all procurement items solicited provided the solicitation indicates that multiple contracts will be awarded to the lowest bidders for all procurement items being solicited as determined by the following methods:
    - (i) all bids within a specified percentage, not to exceed five percent, of the lowest responsive and responsible bid, unless otherwise approved in writing by the chief procurement officer or head of a procurement unit with independent procurement authority;
    - (ii) all responsive and responsible bidders will be awarded a contract, provided the contract specifically directs that orders must be placed first with low bidder unless the lowest bidder cannot provide the needed procurement item, then with the second lowest bidder unless the second lowest bidder cannot provide the needed procurement item, then with the third lowest bidder unless the third lowest bidder cannot provide the needed procurement item, and so on in order from the lowest responsive and responsible bidder to the highest responsive and responsible bidder; or
    - (iii) other methodology described in the solicitation to award contracts;
  - (b) lowest bid by Category provided:

- (i) the solicitation indicates that a contract will be awarded based on the lowest bid per category;
    - (ii) only one bidder may be awarded a contract per category;
  - (c) lowest bid by line item provided:
    - (i) the solicitation indicates that a contract will be awarded based on the lowest bid per line item, task or service;
    - (ii) only one bidder may be awarded a contract per line item, task or service; or
  - (d) Other specific objective methodology described in the solicitation, such as R33-12-302 for primary and secondary contracts, approved by the chief procurement officer or head of a procurement unit with independent procurement authority.
- (6) Multiple award contracts in a request for proposals shall be conducted and awarded in accordance with Utah Code 63G-6a, Part 7 and may be awarded on a statewide, regional, combination statewide and regional basis, agency specific requirement, or other criteria set forth in the solicitation and in accordance with point thresholds and other methodology set forth in the RFP describing how multiple award contracts will be awarded with enough specificity as to avoid the appearance of any favoritism affecting the decision of whether to award a multiple contract and who should receive a multiple award contract.

**R33-12-301a. Multiple Award Contracts for Unidentified Procurement Items.**

- (1) An unidentified procurement item is defined as a procurement item that at the time the solicitation is issued:
  - (a) Has not been specifically identified but will be identified at some time in the future, such as an approved vendor list or approved consultant list;
  - (b) Does not have a clearly defined project or procurement specific scope of work; and
  - (c) Does not have a clearly defined project or procurement specific budget.
- (2) Unidentified procurement items may be procured under the approved vendor list thresholds established by the applicable rule making authority or Section R33-4-102.
- (3) An RFP, request for statements of qualifications, or multi stage solicitation issued for a multiple award contract for unidentified procurement item(s) must specify the methodology that the procurement unit will use to determine which vendor under the multiple award contract will be selected.
  - (a) The methodology must include a procedure to document that the procurement unit is obtaining best value, including an analysis of cost and other evaluation criteria outlined in the solicitation.
  - (b) The methodology must also ensure the fair and equitable treatment of each multiple award contract vendor, including using methods to select a vendor such as:
    - (i) a rotation system, organized alphabetically, numerically, or randomly;
    - (ii) assigning a potential vendor or contractor to a specified geographical area;

- (iii) classifying each potential vendor or contractor based on the potential vendor's or contractor's field or area of expertise; or
- (iv) obtaining quotes or bids from two or more vendors or contractors.

### **R33-12-301b. Ordering From A Multiple Award Contract.**

- (1)(a) When buying a procurement item from a multiple award contract solicited through an invitation for bids, a procurement unit shall:
  - (i) obtain a minimum of two quotes for the procurement item if the contract was awarded based on the method described in R33-12-301(5)(a)(i) and place the order for the procurement item with the vendor or contractor with the lowest quoted price;
  - (ii) place the order for the procurement item with the lowest bidder on contract unless the lowest bidder cannot provide the needed procurement item, then the order may be placed with the second lowest bidder unless the second lowest bidder cannot provide the needed procurement item and on, in order, from lowest bidder to highest bidder as described in R33-12-301(5)(a)(ii);
  - (iii) place the order in accordance with instructions contained in the contract for the procurement item if the contract was awarded based on the method described in R33-12-301(5)(a)(iii);
  - (iv) place the order for the procurement item if the contract was awarded based on the method described in R33-12-301(5)(b); or
  - (v) place the order for the procurement item if the contract was awarded based on the method described in R33-12-301(5)(c);
- (b) The requirement to obtain two or more quotes in section (1)(a)(i) is waived when there is only one bidder award for the particular procurement item or only one bidder is awarded per geographical area.
- (2) When buying a procurement item from a multiple award contract solicited through an RFP, a procurement unit may place orders with any vendor or contractor under contract based on which procurement item best meets the needs of the procurement unit. Contracts awarded through the RFP process are awarded based on best value as determined by cost and non-price criteria specified in the RFP. As a result, all vendors, contractors and procurement items under contract issued through an RFP have been determined to provide best value to procurement units buying from these contracts.
- (3) A procurement unit may not use a multiple award contract to steer purchases to a favored vendor or use any other means or methods that do not result in fair consideration being given to all vendors that have been awarded a contract under a multiple award.

### **R33-12-302. Primary and Secondary Contracts.**

- (1) Designations of multiple award contracts as primary and secondary may be made provided a statement to that effect is contained in the solicitation documents.

- (2) When the chief procurement officer or head of a procurement unit with independent procurement authority determines that the need for procurement items will exceed the capacity of any single primary contractor, secondary contracts may be awarded to additional contractors.
- (3) Purchases under primary and secondary contracts shall be made, initially to the primary contractor offering the lowest contract price until the primary contractor's capacity has been reached or the items are not available from the primary contractor, then to secondary contractors in progressive order from lowest price or availability to the next lowest price or availability, and so on.

### **R33-12-303. Intent to Use.**

If a multiple award is anticipated prior to issuing a solicitation, the method of award shall be stated in the solicitation.

### **R33-12-401. Contracts and Change Orders -- Contract Types.**

A procurement unit may use contract types to the extent authorized under Section 63G-6a-1205.

### **R33-12-402. Prepayments.**

Prepayments are subject to the restrictions contained in Section 63G-6a-1208.

### **R33-12-403. Leases of Personal Property.**

Leases of personal property are subject to the following:

- (1) Leases shall be conducted in accordance with Division of Finance rules and Section 63G-6a-1209.
- (2) A lease may be entered into provided the procurement unit complies with Section 63G-6a-1209 and:
  - (a) it is in the best interest of the procurement unit;
  - (b) all conditions for renewal and costs of termination are set forth in the lease; and
  - (c) the lease is not used to avoid a competitive procurement.
- (3) Lease contracts shall be conducted with as much competition as practicable.
- (4) Executive Branch Procurement Unit Leases with Purchase Option. A purchase option in a lease may be exercised if the lease containing the purchase option was awarded under an authorized procurement process. Before exercising this option, the procurement unit shall:
  - (a) investigate alternative means of procuring comparable procurement items; and
  - (b) compare estimated costs and benefits associated with the alternative means and the exercise of the option, for example, the benefit of buying new state of the art data

processing equipment compared to the estimated, initial savings associated with exercise of a purchase option.

#### **R33-12-404. Multi-Year Contracts.**

- (1) Procurement units may issue multi-year contracts in accordance with Section 63G-6a-1204.
- (2) The standard contract term for executive branch procurement units is five years, unless the chief procurement officer or head of a procurement unit with independent procurement authority determines that a shorter or longer term contract is in the best interest of the procurement unit after considering:
  - (a) the cost associated with conducting more than one procurement within a five-year period if a shorter term is required;
  - (b) the impact on competition if a longer term is required;
  - (c) standard practices for the industry; and
  - (d) the needs of the procurement unit.

#### **R33-12-404.1. Contracts With Renewal Options.**

- (1) In order to ensure fair and open competition in the procurement process and to avoid costs associated with administering contracts with renewal options, executive branch procurement units shall document in writing why renewal options are in the best interest of the procurement unit taking into consideration:
  - (a) federal funding requirements;
  - (b) the cost associated with administering renewal options;
  - (c) how the cost of the procurement item will be established during any renewal periods; and
  - (d) how the principle of upholding fair and open competition will be maintained.

#### **R33-12-405. Installment Payments.**

- (1) Procurement units may make installment payments in accordance with Section 63G-6a-1208.

#### **R33-12-501. Change Orders.**

- (1) In addition to the requirements contained in Section 63G-6a-1207, for executive branch procurement units without independent procurement authority, the certifications required under 63G-6a-1207(1) and 63G-6a-1207(2) must be submitted in writing by the procurement unit to the chief procurement officer prior to the commencement of any work to be performed under a contract change order unless:



- (a) The procurement unit has authority, as may be granted under Section 63G-6a-304(1) and Section R33-3-101, to authorize contract change orders up to the amount delegated; or
  - (b) The change order is requisite to:
    - (i) avert an emergency; or
    - (ii) is required as an emergency.
  - (c) For purposes of this subsection "emergency" is described in Subsection R33-8-401(3) and is subject to Section 63G-6a-803.
- (2) Any contract change order authorized by a procurement unit under Subsection R33-12-501(1)(c) shall, as soon as practicable, be submitted to the chief procurement officer and included in the division's contract file.

### **R33-12-502. Contract Modifications for New Technology and Technological Upgrades.**

A contract for a procurement item may be modified to include new technology or technological upgrades associated with the procurement item, provided:

- (1) The solicitation contains a statement indicating that:
  - (a) the awarded contract may be modified to incorporate new technology or technological upgrades associated with the procurement item being solicited, including new or upgraded:
    - (i) systems;
    - (ii) apparatuses;
    - (iii) modules;
    - (iv) components; and
    - (v) other supplementary items;
  - (b) a maintenance or service agreement associated with the procurement item under contract may be modified to include any new technology or technological upgrades; and
  - (c) Any contract modification incorporating new technology or technological upgrades is specific to the procurement item being solicited and substantially within the scope of the original procurement or contract.
- (2) Any contract modification incorporating new technology or technological upgrades is agreed upon by all parties and is executed using the process set forth in the contract for other contract modifications.
- (3) Prior to executing a contract modification incorporating new technology or technological upgrades, executive branch procurement units shall obtain the approval of the Executive Director of the Department of Technology Services.
- (4) A contract modification for new technology or technology upgrades may not extend the term of the contract except as provided in the Utah Procurement Code.

### **R33-12-601. Requirements for Cost or Pricing Data.**

- (1) For contracts that expressly allow price adjustments, cost or pricing data shall be required in support of a proposal leading to the adjustment of any contract pricing.
- (2) Cost or pricing data exceptions:
  - (a) need not be submitted when the terms of the contract state established market indices, catalog prices or other benchmarks are used as the basis for contract price adjustments or when prices are set by law or rule;
  - (b) if a contractor submits a price adjustment higher than established market indices, catalog prices or other benchmarks established in the contract, the chief procurement officer or head of a procurement unit with independent procurement authority may request additional cost or pricing data; or
  - (c) the chief procurement officer or head of a procurement unit with independent procurement authority may waive the requirement for cost or pricing data provided a written determination is made supporting the reasons for the waiver. A copy of the determination shall be kept in the contract file.

### **R33-12-602. Defective Cost or Pricing Data.**

- (1) If defective cost or pricing data was used to adjust a contract price, the vendor and the procurement unit may enter into discussions to negotiate a settlement.
- (2) If a settlement cannot be negotiated, either party may seek relief through the courts.

### **R33-12-603. Price Analysis.**

- (1) Price analysis may be used to determine if a price is reasonable and competitive, such as when:
  - (a) there are a limited number of vendors, bidders or offerors;
  - (b) awarding a sole source or other contract without engaging in a standard procurement process; or
  - (c) identifying price that are significantly lower or higher than other vendors, bidders, or offerors.
- (2) Price analysis involves a comparison of prices for the same or similar procurement items, including quality, warranties, service agreements, delivery, contractual provisions, terms and conditions, and so on.
- (3) Examples of a price analysis include:
  - (a) prices submitted by other prospective bidders or offerors;
  - (b) price quotations;
  - (c) previous contract prices;
  - (d) comparisons to the existing contracts of other public entities; and,
  - (e) prices published in catalogs or price lists.

### **R33-12-604. Cost Analysis.**

- (1) Cost analysis includes the verification of cost data. Cost analysis may be used to evaluate:
  - (a) specific elements of costs;
  - (b) total cost of ownership and life-cycle cost;
  - (c) supplemental cost schedules;
  - (d) market basket cost of similar items;
  - (e) the necessity for certain costs;
  - (f) the reasonableness of allowances for contingencies;
  - (g) the basis used for allocation of indirect costs; and,
  - (h) the reasonableness of the total cost or price.

### **R33-12-605. Audit.**

A procurement unit may, at reasonable times and places, audit or cause to be audited by an independent third party firm, by another procurement unit, or by an agent of the procurement unit, the books, records, and performance of a contractor, prospective contractor, subcontractor, or prospective subcontractor.

### **R33-12-606. Retention of Books and Records.**

Contractors shall maintain all records related to the contract. These records shall be maintained by the contractor for at least six years after the final payment, unless a longer period is required by law.

All accounting for contracts and contract price adjustments, including allowable incurred costs, shall be conducted in accordance with generally accepted accounting principles for government.

### **R33-12-607. Applicable Credits.**

Applicable credits are receipts or price reductions which offset or reduce expenditures allocable to contracts as direct or indirect costs. Examples include purchase discounts, rebates, allowance, recoveries or indemnification for losses, sale of scrap and surplus equipment and materials, adjustments for overpayments or erroneous charges, and income from employee recreational or incidental services and food sales.

### **R33-12-608. Use of Federal Cost Principles.**

- (1) In dealing with contractors operating according to federal cost principles, the chief procurement officer or head of a procurement unit with independent procurement authority, may use the federal cost principles, including the determination of allowable, allocable, and reasonable costs, as guidance in

- (2) In contracts not awarded under a program which is funded by federal assistance funds, the chief procurement officer or head of a procurement unit with independent procurement authority may explicitly incorporate federal cost principles into a solicitation and thus into any contract awarded pursuant to that solicitation. The chief procurement officer or head of a procurement unit with independent procurement authority and the contractor by mutual agreement may incorporate federal cost principles into a contract during negotiation or after award.
- (3) In contracts awarded under a program which is financed in whole or in part by federal assistance funds, all requirements set forth in the assistance document including specified federal cost principles, must be satisfied. To the extent that the cost principles specified in the grant document conflict with the cost principles issued pursuant to Section 63G-6a-1206, the cost principles specified in the grant shall control.

### **R33-12-609. Authority to Deviate from Cost Principles.**

If a procurement unit desires to deviate from the cost principles set forth in these rules, a written determination shall be made by the chief procurement officer or head of a procurement unit with independent authority specifying the reasons for the deviation and the written determination shall be made part of the contract file.

### **R33-12-701. Inspections.**

Circumstances under which the procurement unit may perform inspections include inspections of the contractor's manufacturing/production facility or place of business, or any location where the work is performed:

- (1) whether the definition of "responsible", as defined in Section 63G-6a-103(40) and in the solicitation documents, has been met or are capable of being met; and
- (2) if the contract is being performed in accordance with its terms.

### **R33-12-702. Access to Contractor's Manufacturing/Production Facilities.**

- (1) The procurement unit may enter a contractor's or subcontractor's manufacturing/production facility or place of business to:
  - (a) inspect procurement items for acceptance by the procurement unit pursuant to the terms of a contract;
  - (b) audit cost or pricing data or audit the books and records of any contractor or subcontractor pursuant to Section R33-12-605; and
  - (c) investigate in connection with an action to debar or suspend a person from consideration for award of contracts.

### **R33-12-703. Inspection of Supplies and Services.**

- (1) Contracts may provide that the procurement unit or chief procurement officer or head of a procurement unit with independent procurement authority may inspect procurement

items at the contractor's or subcontractor's facility and perform tests to determine whether the procurement items conform to solicitation and contract requirements.

**R33-12-704. Conduct of Inspections.**

- (1) Inspections or tests shall be performed so as not to unduly delay the work of the contractor or subcontractor. No inspector may change any provision of the specifications or the contract without written authorization of the chief procurement officer or head of a procurement unit with independent procurement authority. The presence or absence of an inspector or an inspection, shall not relieve the contractor or subcontractor from any requirements of the contract.
- (2) When an inspection is made, the contractor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.

**KEY: terms and conditions, contracts, change orders, costs**

**Date of Enactment or Last Substantive Amendment: February 23, 2016**

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## **R33. Administrative Services, Purchasing and General Services.**

### **R33-13. General Construction Provisions.**

#### **R33-13-101. Purpose.**

The purpose of this rule is to comply with the provisions of Sections 63G-6a-1302 and 1303 of the Utah Procurement Code. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.

#### **R33-13-201. Construction Management Rule.**

As required by Section 63G-6a-1302, this rule contains provisions applicable to:

- (1) selecting the appropriate method of management for construction contracts;
- (2) documenting the selection of a particular method of construction contract management;  
and
- (3) the selection of a construction manager/general contractor.

#### **R33-13-202. Application.**

The provisions of Rules R33-13-201 through R33-13-205 shall apply to all procurements of construction. Rule R33-4-106 establishes the requirements and thresholds for small construction projects. Construction procurement bid security and bonding requirements are contained in Part 11 of the Utah Procurement Code and Rule R33-11.

#### **R33-13-203. Methods of Construction Contract Management.**

- (1) This section contains provisions applicable to the selection of the appropriate type of construction contract management.
- (2) It is intended that the chief procurement officer or head of a procurement unit with independent procurement authority have sufficient flexibility in formulating the construction contract management method for a particular project to fulfill the needs of the procurement unit. The methods for achieving the purposes set forth in this rule are not to be construed as an exclusive list.
- (3) Before choosing the construction contracting method to use, a careful assessment must be made by the chief procurement officer or head of a procurement unit with independent procurement authority of requirements the project shall consider, at a minimum, the following factors:
  - (a) when the project must be ready to be occupied;
  - (b) the type of project, for example, housing, offices, labs, heavy or specialized construction;
  - (c) the extent to which the requirements of the procurement unit and the way in which they are to be met are known;

- (d) the location of the project;
  - (e) the size, scope, complexity, and economics of the project;
  - (f) the amount and type of financing available for the project, including whether the budget is fixed or what the source of funding is, for example, general or special appropriation, federal assistance moneys, general obligation bonds or revenue bonds, lapsing/nonlapsing status and legislative intent language;
  - (g) the availability, qualification, and experience of the procurement unit's personnel to be assigned to the project and how much time the procurement unit's personnel can devote to the project;
  - (h) the availability, qualifications and experience of outside consultants and contractors to complete the project under the various methods being considered;
    - (i) the results achieved on similar projects in the past and the methods used; and
  - (j) the comparative advantages and disadvantages of the construction contracting method and how they might be adapted or combined to fulfill the needs of the procuring agencies.
- (5) The following descriptions are provided for the more common construction contracting management methods which may be used by the procurement unit. The methods described are not all mutually exclusive and may be combined on a project. These descriptions are not intended to be fixed in respect to all construction projects. In each project, these descriptions may be adapted to fit the circumstances of that project.
- (a) Single Prime (General) Contractor. The single prime contractor method is typified by one business, acting as a general contractor, contracting with the procurement unit to timely complete an entire construction project in accordance with drawings and specifications provided by the procurement unit. Generally the drawings and specifications are prepared by an architectural or engineering firm under contract with the procurement unit. Further, while the general contractor may take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with whom the prime contractor has entered into subcontracts.
  - (b) Multiple Price Contractors. Under the multiple prime contractor method, the procurement unit contracts directly with a number of general contractors or specialty contractors to complete portions of the project in accordance with the procurement unit's drawings and specifications. The procurement unit may have primary responsibility for successful completion of the entire project, or the contracts may provide that one or more of the multiple prime contractors has this responsibility.
  - (c) Design-Build. In a design-build project, an entity, often a team of a general contractor and a designer, contract directly with a procurement unit to meet the procurement unit's requirements as described in a set of performance specifications and/or a program. Design responsibility and construction responsibility both rest with the design-build contractor. This method can include instances where the design-build contractor supplies the site as part of the package.

- (d) Construction Manager Not at Risk. A construction manager is a person experienced in construction that has the ability to evaluate and to implement drawings and specifications as they affect time, cost, and quality of construction and the ability to coordinate the construction of the project, including the administration of change orders as well as other responsibilities as described in the contract.
- (e) Construction Manager/General Contractor (Construction Manager at Risk). The procurement unit may contract with the construction manager early in a project to assist in the development of a cost effective design. In a Construction Manager/General Contractor (CM/GC) method, the CM/GC becomes the general contractor and is at risk for all the responsibilities of a general contractor for the project, including meeting the specifications, complying with applicable laws, rules and regulations, that the project will be completed on time and will not exceed a specified maximum price.

### **R33-13-204. Selection of Construction Method Documentation.**

The chief procurement officer or head of a procurement unit with independent procurement authority shall include in the contract file a written statement describing the facts that led to the selection of a particular method of construction contract management for each project.

### **R33-13-205. Special Provisions Regarding Construction Manager/General Contractor.**

- (1) In the selection of a construction manager/general contractor, a standard procurement process as defined in Section 63G-6a-103 may be used or an exception allowed under Part 8 of the Utah Procurement Code.
- (2) When the CM/GC enters into any subcontract that was not specifically included in the construction manager/general contractor's cost proposal, the CM/GC shall procure the subcontractor(s) by using a standard procurement process as defined in Section 63G-6a-103 of the Utah Procurement Code or an exception to the requirement to use a standard procurement process, described in Part 8 of the Utah Procurement Code.
- (3)(a) As used in this Rule R33-13-205 (6), "management fee" includes only the following fees of the CM/GC:
  - (i) preconstruction phase services;
  - (ii) monthly supervision fees for the construction phase; and
  - (iii) overhead and profit for the construction phase.
- (b) When selecting a CM/GC for a construction project, the evaluation committee:
  - (i) may score a CM/GC based upon criteria contained in the solicitation, including qualifications, performance ratings, references, management plan, certifications, and other project specific criteria described in the solicitation;
  - (ii) may, 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;



- (iii) 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; and
- (iv) except as provided in Section 63G-6a-707, 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 issuing procurement unit.

**R33-13-301. Drug and Alcohol Testing Required for State Contracts:  
Definitions.**

- (1) The following definitions shall apply to any term used in Rules R-13-301 through R33-13-304:
  - (a) "Contractor" means a person who is or may be awarded a state construction contract.
  - (b) "Covered individual" means an individual who:
    - (i) on behalf of a contractor or subcontractor provides services directly related to design or construction under a state construction contract; and
    - (ii) is in a safety sensitive position, including a design position, that has responsibilities that directly affect the safety of an improvement to real property that is the subject of a state construction contract.
  - (c) "Drug and alcohol testing policy" means a policy under which a contractor or subcontractor tests a covered individual to establish, maintain, or enforce the prohibition of:
    - (i) the manufacture, distribution, dispensing, possession, or use of drugs or alcohol, except the medically prescribed possession and use of a drug; or
    - (ii) the impairment of judgment or physical abilities due to the use of drugs or alcohol.
  - (d) "Random testing" means that a covered individual is subject to periodic testing for drugs and alcohol:
    - (i) in accordance with a drug and alcohol testing policy; and
    - (ii) on the basis of a random selection process.
  - (e) For purposes of Subsection R33-13-302(5), "state" includes any of the following of the state:
    - (i) a department;
    - (ii) a division;
    - (iii) an agency;
    - (iv) a board including the Procurement Policy Board;
    - (v) a commission;
    - (vi) a council;
    - (vii) a committee; and

- (viii) an institution, including a state institution of higher education, as defined under Section 53B-3-102.
  - (f) "State construction contract" means a contract for design or construction entered into by a state public procurement unit that is subject to this Rule R33-13-302 through R33-13-304.
  - (g)(i) "Subcontractor" means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction.
  - (ii) "Subcontractor" includes a trade contractor or specialty contractor.
  - (iii) "Subcontractor" does not include a supplier who provides only materials, equipment, or supplies to a contractor or subcontractor.
- (2) In addition:
- (a) "Board" means the Procurement Policy Board created under provisions of the Utah Procurement Code.
  - (b) "State Public Procurement Unit" means a State of Utah public procurement unit that is subject to Section 63G-6a-1303.
  - (c) "State" as used throughout this Rule R33-13-302 through R33-13-304 means the State of Utah except that it also includes those entities described in Subsection R33-13-302(1)(e) as the term "state" is used in Subsection R33-13-302(5).

### **R33-13-302. Drug and Alcohol Testing.**

- (1) Except as provided in Section R33-13-303, on and after July 1, 2010, a State Public Procurement Unit may not enter into a state construction contract (includes a contract for design or construction) unless the state construction contract requires the following:
  - (a) A contractor shall demonstrate to the State Public Procurement Unit that the contractor:
    - (i) has and will maintain a drug and alcohol testing policy during the period of the state construction contract that applies to the covered individuals hired by the contractor;
    - (ii) posts in one or more conspicuous places notice to covered individuals hired by the contractor that the contractor has the drug and alcohol testing policy described in Subsection R33-13-302(1)(a)(i); and
    - (iii) subjects the covered individuals to random testing under the drug and alcohol testing policy described in Subsection R33-13-302(1)(a)(i) if at any time during the period of the state construction contract there are ten or more individuals who are covered individuals hired by the contractor.
  - (b) A contractor shall demonstrate to the State Public Procurement Unit, which shall be demonstrated by a provision in the contract where the contractor acknowledges these Rules R-33-13-302 through 304 and agrees to comply with all aspects of these Rules R-33-13-302 through 304, that the contractor requires that as a condition of contracting with the contractor, a subcontractor, which includes consultants under contract with the designer:

- (i) has and will maintain a drug and alcohol testing policy during the period of the state construction contract that applies to the covered individuals hired by the subcontractor;
  - (ii) posts in one or more conspicuous places notice to covered individuals hired by the subcontractor that the subcontractor has the drug and alcohol testing policy described in Subsection R33-13-302(1)(b)(i); and
  - (iii) subjects the covered individuals hired by the subcontractor to random testing under the drug and alcohol testing policy described in Subsection R33-13-302(1)(b)(i) if at any time during the period of the state construction contract there are ten or more individuals who are covered individuals hired by the subcontractor.
- (2)(a) Except as otherwise provided in this Subsection R33-13-302(2), if a contractor or subcontractor fails to comply with Subsection R33-13-302(1), the contractor or subcontractor may be suspended or debarred in accordance with these Rules R33-13-302 through R33-13-304.
- (b) On and after July 1, 2010, a State Public Procurement Unit shall include in a state construction contract a reference to these Rules R33-13-302 through R33-13-304.
- (c)(i) A contractor is not subject to penalties for the failure of a subcontractor to comply with Subsection R33-13-302(1).
- (ii) A subcontractor is not subject to penalties for the failure of a contractor to comply with Subsection R33-13-302(1).
- (3)(a) The requirements and procedures a contractor shall follow to comply with Subsection R33-13-302(1) is that the contractor, by executing the construction contract with the State Public Procurement Unit, is deemed to certify to the State Public Procurement Unit that the contractor, and all subcontractors under the contractor that are subject to Subsection R33-13-302(1), shall comply with all provisions of these Rules R33-13-302 through R33-13-304 as well as Section 63G-6a-1303; and that the contractor shall on a semi-annual basis throughout the term of the contract, report to the State Public Procurement Unit in writing information that indicates compliance with the provisions of these Rules R33-13-302 through R33-13-304 and Section 63G-6a-1303.
- (b) A contractor or subcontractor may be suspended or debarred in accordance with the applicable Utah statutes and rules, if the contractor or subcontractor violates a provision of Section 63G-6a-1303. The contractor or subcontractor shall be provided reasonable notice and opportunity to cure a violation of Sections 63G-6a-1303 before suspension or debarment of the contractor or subcontractor in light of the circumstances of the state construction contract or the violation. The greater the risk to person(s) or property as a result of noncompliance, the shorter this notice and opportunity to cure shall be, including the possibility that the notice may provide for immediate compliance if necessary to protect person(s) or property.
- (4) The failure of a contractor or subcontractor to meet the requirements of Subsection R33-13-302(1):
- (a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under the Utah Procurement Code; and

- (b) may not be used by a State Public Procurement Unit, a prospective bidder, an offeror, a contractor, or a subcontractor as a basis for an action that would suspend, disrupt, or terminate the design or construction under a state construction contract.
- (5)(a) After a State Public Procurement Unit enters into a state construction contract in compliance with Section 63G-6a-1303, the state is not required to audit, monitor, or take any other action to ensure compliance with Section 63G-6a-1303.
- (b) The state is not liable in any action related to Section 63G-6a-1303 and these Rules R33-13-302 through R33-13-304, including not being liable in relation to:
    - (i) a contractor or subcontractor having or not having a drug and alcohol testing policy;
    - (ii) failure to test for a drug or alcohol under a contractor's or subcontractor's drug and alcohol testing policy;
    - (iii) the requirements of a contractor's or subcontractor's drug and alcohol testing policy;
    - (iv) a contractor's or subcontractor's implementation of a drug and alcohol testing policy, including procedures for:
      - (A) collection of a sample;
      - (B) testing of a sample;
      - (C) evaluation of a test; or
      - (D) disciplinary or rehabilitative action on the basis of a test result;
    - (v) an individual being under the influence of drugs or alcohol; or
    - (vi) an individual under the influence of drugs or alcohol harming another person or causing property damage.

### **R33-13-303. Non-applicability.**

- (1) These Rules R33-13-302 through R33-13-304 and Section 63G-6a-1303 does not apply if the State Public Procurement Unit determines that the application of these Rules R33-13-302 through R33-13-304 or Section 63G-6a-1303 would severely disrupt the operation of a state agency to the detriment of the state agency or the general public, including:
- (a) jeopardizing the receipt of federal funds;
  - (b) the state construction contract being a sole source contract; or
  - (c) the state construction contract being an emergency procurement.

### **R33-13-304. Not Limit Other Lawful Policies.**

If a contractor or subcontractor meets the requirements of Section 63G-6a-1303 and these Rules R33-13-302 through R33-13-304, this Rule R33-13 may not be construed to restrict the contractor's or subcontractor's ability to impose or implement an otherwise lawful provision as part of a drug and alcohol testing policy.

**KEY: construction management, general construction provisions, drug and alcohol testing, state contracts**  
**Date of Enactment or Last Substantive Amendment: July 8, 2014**  
**Authorizing, and Implemented or Interpreted Law: 63G-6a**

**R33. Administrative Services, Purchasing and General Services.**

**R33-14. Procurement of Design-Build Transportation Project Contracts.**

**R33-14-1. Procurement of Design-Build Transportation Project Contracts.**

In accordance with Section 63G-6a-1402(3)(a)(ii), the Utah Department of Transportation shall make rules governing the procurement of design-build transportation projects. Rule R916-3 provides guidance under which the Utah Department of Transportation may use the design-build approach for transportation projects.

**KEY: design-build transportation projects, contracts, procurement**

**Date of Enactment or Last Substantive Amendment: July 8, 2014**

**Authorizing, and Implemented or Interpreted Law: 63G-6a**

## **R33. Administrative Services, Purchasing and General Services.**

### **R33-15. Procurement of Design Professional Services.**

#### **R33-15-101. Application.**

The provisions of Part 15 of the Utah Procurement Code apply to every procurement of services within the scope of the practice of architecture as defined by Section 58-3a-102, or professional engineering as defined in Section 58-22-102, except as authorized by Section R33-4-105. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

#### **R33-15-201. Architect-Engineer Evaluation Committee.**

The chief procurement officer or head of a procurement unit with independent procurement authority shall designate members of the Architect-Engineer Evaluation Committee. The evaluation committee must consist of at least three members who are qualified under Section 63G-6a-707, at least one of which is well qualified in the profession of architecture or engineering.

#### **R33-15-301. Request for Statement of Qualifications.**

- (1) A procurement unit shall issue a public notice for a request for statement of qualifications to rank architects or engineers.
- (2) A procurement unit that issues a request for statement of qualifications shall:
  - (a) state in the request for statement of qualifications:
    - (i) the type of procurement item to which the request for statement of qualifications relates;
    - (ii) the scope of work to be performed;
    - (iii) the instructions and the deadline for providing information in response to the request for statement of qualifications;
    - (iv) criteria used to evaluate statements of qualifications including:
      - (A) basic information about the person or firm;
      - (B) experience and work history;
      - (C) management and staff;
      - (D) qualifications and certification;
      - (E) licenses and certifications;
      - (F) applicable performance ratings;
      - (G) financial statements; and
      - (H) other pertinent information.

- (b) Key personal identified in the statement of qualifications may not be changed without the advance written approval of the procurement unit.
- (3) Architects and engineers shall not include cost in a response to a request for statement of qualifications

**R33-15-302. Evaluation of Statement of Qualifications.**

The evaluation committee shall evaluate statements of qualifications in accordance with Section 63G-6a-707 to rank (score) architects or engineers.

**R33-15-303. Negotiation and Award of Contract.**

The chief procurement officer or head of a procurement unit with independent procurement authority shall negotiate a contract with the most qualified firm for the required services at compensation determined to be fair and reasonable.

**R33-15-304. Failure to Negotiate Contract With the Highest Ranked Firm.**

- (1) If fair and reasonable compensation, contract requirements, and contract documents cannot be agreed upon with the highest ranked firm, the chief procurement officer or head of a procurement unit with independent procurement authority shall advise the firm in writing of the termination of negotiations.
- (2) Upon failure to negotiate a contract with the highest ranked firm, the chief procurement officer or head of a procurement unit with independent procurement authority shall proceed in accordance with Section 63G-6a-1505 of the Utah Procurement Code.

**R33-15-305. Notice of Award.**

- (1) The chief procurement officer or head of a procurement unit with independent procurement authority shall award a contract to the highest ranked firm with which the fee negotiation was successful.
- (2) Notice of the award shall be made available to the public.

**R33-15-401. Written Justification Statements.**

Executive branch procurement units shall issue a statement justifying the ranking of the firm with which fee negotiation was successful.

**KEY: architects, engineers, government purchasing**  
**Date of Enactment or Last Substantive Amendment: July 8, 2014**  
**Authorizing, and Implemented or Interpreted Law: 63G-6a**



## **R33. Administrative Services, Purchasing and General Services.**

### **R33-16. Protests.**

#### **R33-16-101. Conduct.**

Controversies and protests shall be conducted in accordance with the requirements set forth in Sections 63G-6a-1601 through 13G-6a-604. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

#### **R33-16-101a. Grounds for a Protest.**

- (1) This Rule shall apply to all protests filed under Section 63G-6a-1602.
- (2) In accordance with the requirements set forth in Section 63G-6a-1602(3)(a)(ii), a person filing a protest must include a concise statement of the grounds upon which the protest is made.
  - (a) A concise statement of the grounds for a protest should include the relevant facts leading the protestor to contend that a grievance has occurred, including but not limited to specifically referencing:
    - (i) An alleged violation of Utah Procurement Code 63G-6a;
    - (ii) An alleged violation of Title R33 or other applicable rule;
    - (iii) A provision of the request for proposals, invitation for bids, or other solicitation allegedly not being followed;
    - (iv) A provision of the solicitation alleged to be:
      - (A) ambiguous;
      - (B) confusing;
      - (C) contradictory;
      - (D) unduly restrictive;
      - (E) erroneous;
      - (F) anticompetitive; or
      - (G) unlawful;
    - (v) An alleged error made by the evaluation committee or conducting procurement unit;
    - (vi) An allegation of bias by the evaluation committee or an individual committee member; or
    - (vii) A scoring criteria allegedly not being correctly applied or calculated.
  - (b) "Relevant Facts" as referred to in Section 63G-6a-1602(3)(a)(ii), in addition to being relevant, must be specific enough to enable the protest officer to determine, if such facts are proven to be true, whether a legitimate basis for the protest exists.

- (c) None of the following qualify as a concise statement of the grounds for a protest:
- (i) claims made after the opening of bids or closing date of proposals that the specifications, terms and conditions, or other elements of a solicitation are ambiguous, confusing, contradictory, unduly restrictive, erroneous, or anticompetitive;
  - (ii) vague or unsubstantiated allegations that do not reference relevant or specific facts including, but not limited to, vague or unsubstantiated allegations by a bidder, offeror, or prospective contractor that:
    - (A) a bidder, offeror, or prospective contractor should have received a higher score or that another bidder, offeror, or prospective contractor should have received a lower score;
    - (B) a service or product provided by a bidder, offeror, or prospective contractor is better than another bidder's, offeror's, or prospective contractor's service or product;
    - (C) another bidder, offeror, or prospective contractor cannot provide the procurement item for the price bid or perform the services described in the solicitation; or
    - (D) any item listed in Section 63G-6a-1602(3)(a)(ii) of this Rule has occurred that is not relevant or specific;
  - (iii) Filing a protest requesting:
    - (A) a detailed explanation of the thinking and scoring of evaluation committee members, beyond the official justification statement described in Section 63G-6a-708,
    - (B) protected information beyond what is provided under the disclosure provisions of the Utah Procurement Code; or
    - (C) other information, documents, or explanations reasonably deemed to be not in compliance with the Utah Code or this Rule by the protest officer.
  - (d) In accordance with Section 63G-6a-1603(1), a protest officer may dismiss a protest if the concise statement of the grounds for filing a protest does not comply with this Rule.

### **R33-16-201. Verification of Legal Authority.**

A person filing a protest may be asked to verify that the person has legal authority to file a protest on behalf of the public or private corporation, governmental entity, sole proprietorship, partnership, or unincorporated association.

### **R33-16-301. Intervention in a Protest.**

- (1) Application. This Rule contains provisions applicable to intervention in a protest, including who may intervene and the time and manner of intervention.

- (2) **Period of Time to File.** After a timely protest is filed in accordance with the Utah Procurement Code, the Protest Officer shall notify awardees of the subject procurement and may notify others of the protest. A Motion to Intervene must be filed with the Protest Officer no later than ten days from the date such notice is sent by the Protest Officer. Only those Motions to Intervene made within the time prescribed in this Rule will be considered timely. The entity or entities who conducted the procurement and those who are the intended beneficiaries of the procurement are automatically considered a Party of Record and need not file any Motion to Intervene.
- (3) **Contents of a Motion to Intervene.** A copy of the Motion to Intervene shall also be mailed or emailed to the person protesting the procurement.
- (4) **Any Motion to Intervene must state, to the extent known, the position taken by the person seeking intervention and the basis in fact and law for that position. A motion to intervene must also state the person's interest in sufficient factual detail to demonstrate that:**
  - (a) the person seeking to intervene has a right to participate which is expressly conferred by statute or by Commission rule, order, or other action;
  - (b) the person seeking to intervene has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a:
    - (i) consumer;
    - (ii) customer;
    - (iii) competitor;
    - (iv) security holder of a party; or
    - (v) the person's participation is in the public interest.
- (5) **Granting of Status.** If no written objection to the timely Motion to Intervene is filed with the Protest Officer within seven calendar days after the Motion to Intervene is received by the protesting person, the person seeking intervention becomes a party at the end of this seven day period. If an objection is timely filed, the person seeking intervention becomes a party only when the motion is expressly granted by the Protest Officer based on a determination that a reason for intervention exists as stated in this Rule. Notwithstanding any provision of this Rule, an awardee of the procurement that is the subject of a protest will not be denied their Motion to Intervene, regardless of its content, unless it is not timely filed with the Protest Officer.
- (6) **Late Motions.** If a motion to intervene is not timely filed, the motion shall be denied by the Protest Officer.

### **R33-16-401. Protest Officer May Correct Noncompliance, Errors and Discrepancies.**

- (1) At any time during the protest process, if it is discovered that a procurement is out of compliance with any part of the Utah Procurement Code or Administrative Rules established by the applicable rule making authority, including errors or discrepancies, the protest officer, chief procurement officer, or head of a procurement unit with

independent procurement authority, may take administrative action to correct or amend the procurement to bring it into compliance, correct errors or discrepancies or cancel the procurement.

**KEY: conduct, controversies, government purchasing, protests**

**Date of Enactment or Last Substantive Amendment: August 21, 2015**

**Authorizing, and Implemented or Interpreted Law: 63G-6a**

## **R33. Administrative Services, Purchasing and General Services.**

### **R33-17. Procurement Appeals Board.**

#### **R33-17-101. Statutory Requirements.**

Appeals to a protest decision shall be conducted in accordance with the requirements set forth in Section 63G-6a-1701 through 63G-6a-1706, Utah Procurement Code. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

#### **R33-17-102. Verification of Legal Authority.**

A person filing an appeal to a protest decision may be asked to verify that the person has legal authority to file an appeal on behalf of the public or private corporation, governmental entity, sole proprietorship, partnership, or unincorporated association.

#### **R33-17-103. Conduct of the Hearing.**

The Chair of the panel shall conduct the hearing, including:

- (a) establishing time limits;
- (b) determining who may address the panel and who may ask a question;
- (c) requiring legal memorandum or points and authorities; and
- (d) determining other procedural matters.

#### **R33-17-104. Expedited Proceedings.**

A proceeding before the panel may be expedited as follows:

- (a) The panel may, upon written notice to all parties, hold a pre-proceeding conference for the purpose of formulating and simplifying the issues or any other matter that assists with the proceeding. A person participating in a pre-proceeding conference on behalf of each party shall have authority to negotiate and agree to settlement of the dispute.
- (b) Any party may request a pre-proceeding conference in an effort to expedite the proceeding. Upon such a request to expedite the proceeding, the Panel shall consider any expedited process that considers the needs to expedite the proceeding while assuring that the due process rights of all parties are protected.

#### **R33-17-105. Electronic Participation.**

Any panel member or participant may participate electronically by:

- (a) notifying the Chair of the Panel at least 24 hours in advance of the proceeding;
- (b) the Chair of the Panel will allow such electronic participation provided that the electronic means for such participation, by phone, computer or otherwise, is available at the location; and
- (c) the electronic means allows other members of the Panel and other participants to hear the person or persons participating electronically.

**KEY: hearings, Procurement Appeals Board, verification of legal authority**

**Date of Enactment or Last Substantive Amendment: July 8, 2014**

**Authorizing, and Implemented or Interpreted Law: 63G-6a**

## **R33. Administrative Services, Purchasing and General Services.**

### **R33-18. Appeals to Court and Court Proceedings.**

#### **R33-18-101. Process.**

- (1) A person who receives an adverse decision, or a procurement unit, may appeal a decision of a procurement appeals panel to the Utah Court of Appeals within seven days after the day on which the decision is issued.
- (2) All appeals to the Utah Court of Appeals are subject to the provisions of the requirements set forth in Section 63G-6a-1801 through 63G-6a-1803. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

#### **R33-18-201. Appeals by Procurement Units -- Limitations.**

A procurement unit may only appeal a procurement appeals panel decision in accordance with Section 63G-6a-1802(2).

**KEY: appeals, protests, Utah Court of Appeals**

**Date of Enactment or Last Substantive Amendment: July 8, 2014**

**Authorizing, and Implemented or Interpreted Law: 63G-6a**

## **R33. Administrative Services, Purchasing and General Services.**

### **R33-19. General Provisions Related to Protest or Appeal.**

#### **R33-19-101. Encouraged to Obtain Legal Advice From Legal Counsel.**

- (1) All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.
- (2) Part 19 of the Utah Procurement Code, Sections 63G-6a-901 through 63G-6a-1911 contain provisions regarding:
  - (a) limitations on challenges of:
    - (i) a procurement;
    - (ii) a procurement process;
    - (iii) the award of a contract relating to a procurement;
    - (iv) a debarment; or
    - (v) a suspension; and
  - (b) the effect of a timely protest or appeal;
  - (c) the costs to or against a protester;
  - (d) the effect of prior determinations by employees, agents, or other persons appointed by the procurement unit;
  - (e) the effect of a violation found after award of a contract;
  - (f) the effect of a violation found prior to the award of a contract;
  - (g) interest rates; and
  - (h) a listing of determinations that are final and conclusive unless they are arbitrary and capricious or clearly erroneous.
- (3) Due to the complex nature of protests and appeals, any person involved in the procurement process, protest or appeal, is encouraged to seek advice from the person's own legal counsel.

**KEY: appeals, protests, general provisions, procurement code**

**Date of Enactment or Last Substantive Amendment: July 8, 2014**

**Authorizing, and Implemented or Interpreted Law: 63G-6a**



## **R33. Administrative Services, Purchasing and General Services.**

### **R33-20. Records.**

#### **R33-20-101. General Provisions Related to Records.**

General provisions related to records are in Part 20 of the Utah Procurement Code and in Rule R33-12.

**KEY: records, general provisions, procurement code**

**Date of Enactment or Last Substantive Amendment: July 8, 2014**

**Authorizing, and Implemented or Interpreted Law: 63G-6a**

## **R33. Administrative Services, Purchasing and General Services.**

### **R33-21. Interaction Between Procurement Units.**

#### **R33-21-101. Cooperative Purchasing.**

Cooperative purchasing shall be conducted in accordance with the requirements set forth in Section 63G-6a-2105. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This Rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.

#### **R33-21-201. State Cooperative Contracts.**

- (a) An executive branch procurement unit shall obtain procurement items from state cooperative contracts whether statewide or regional unless the chief procurement officer determines, in accordance with Section 63G-6a-506(5)(b)(i), that it is in the best interest of the state to obtain an individual procurement item outside the state contract.
- (b) In accordance with Section 63G-6a-2105, public entities, nonprofit organizations, and agencies of the federal government may obtain procurement items from state cooperative contracts awarded by the chief procurement officer.

#### **R33-21-201e. Division May Charge Administrative Fees on State Cooperative Contracts - Prohibition Against Other Procurement Units Charging Fees on State Contracts.**

- (1) In accordance with Section 63A-1-109.5, 63A-2-103(3), 63G-6a-303(2)(b), and other applicable State of Utah law, the Director of the Division of Purchasing and General Services serving as the chief procurement officer of the state shall administer the state's cooperative purchasing program and may impose or assess an administrative fee on contractors and vendors on state cooperative contracts as part of its internal service fund authorization.
- (2) The Division shall include a provision in each state cooperative contract prohibiting any other procurement unit from charging any type of fee, surcharge, or rebate on a state cooperative contract issued by the chief procurement officer.

#### **R33-21-301. Discount Pricing for Large Volume Purchases for Items on State Contract.**

- (1) Eligible users of state cooperative contracts may seek to obtain additional volume discount pricing for large volume orders provided state cooperative contractors are willing to offer additional discounts for large volume orders.
  - (a) Eligible users may not coerce, intimidate or in any way compel vendors on state cooperative contracts to offer additional discount pricing.

- (b) Eligible users seeking additional pricing discounts for large volume purchases shall issue a "Request for Price Quotations" to each vendor on a state cooperative contract for the procurement item being purchased.
- (c) Executive branch procurement units without independent procurement authority shall contact the division to issue the request for price quotations.
- (d) The request for price quotations shall include:
  - (i) a detailed description of the procurement item;
  - (ii) the estimated number or volume of procurement items that will be purchased;
  - (iii) the period of time that price quotations will be accepted, including the date and time price quotations will be opened;
  - (iv) the manner in which price quotations will be accepted;
  - (v) the place where price quotations shall be submitted; and
  - (vi) the period of time the price quotation must be guaranteed.
- (e) Price quotations shall be kept confidential until the date and time of the opening and may not be disclosed to other vendors on state cooperative contracts until after the date and time of the opening. Email quotations are acceptable.
- (f) Price quotations will be opened in the presence of a minimum of two witnesses.
- (g) Price quotations will become public at the time of the opening.
- (2) All terms and conditions of the state cooperative contract shall remain in effect unless the chief procurement officer approves the modification.
- (3) This process may not be used for:
  - (a) an anti-competitive practice such as:
    - (i) bid rigging;
    - (ii) steering a contract to a preferred state cooperative contractor;
    - (iii) utilizing auction techniques where price quotations are improperly disclosed and contractors bid against each other's price;
    - (iv) disclosing pricing or other confidential information prior to the date and time of the opening; or
    - (v) any other practice prohibited by the Utah Procurement Code.
- (4) All sales resulting from the quotations received under the process conducted in accordance with Section R33-21-301 shall be recorded as usage under the existing state cooperative contract, are subject to the administrative fee associated with the state cooperative contract, and shall be reported to the division.

**KEY: cooperative purchasing, state contracts, procurement units**  
**Date of Enactment or Last Substantive Amendment: August 22, 2016**  
**Authorizing, and Implemented or Interpreted Law: 63G-6a**

## **R33. Administrative Services, Purchasing and General Services.**

### **R33-22. Reserved.**

#### **R33-22-101. Reserved.**

Part 22 of Title 63G, Chapter 6a, the Utah Procurement Code, does not exist at this point in time. Rules R33-1 through R33-24 are designed to match the corresponding Part of the Utah Procurement Code. When Part 22 of the Utah Procurement Code contains statutory language, the Board will consider whether to prepare draft rules for rulemaking process.

**KEY: government purchasing, reserved**

**Date of Enactment or Last Substantive Amendment: July 8, 2014**

**Authorizing, and Implemented or Interpreted Law: 63G-6a**

## **R33. Administrative Services, Purchasing and General Services.**

### **R33-23. Reserved.**

#### **R33-23-101. Reserved.**

Part 23 of Title 63G, Chapter 6a, the Utah Procurement Code, does not exist at this point in time. Rules R33-1 through R33-24 are designed to match the corresponding Part of the Utah Procurement Code. When Part 23 of the Utah Procurement Code contains statutory language, the Board will consider whether to prepare draft rules for rulemaking process.

**KEY: government purchasing, reserved**

**Date of Enactment or Last Substantive Amendment: July 8, 2014**

**Authorizing, and Implemented or Interpreted Law: 63G-6a**

### **R33. Administrative Services, Purchasing and General Services.**

#### **R33-24. Unlawful Conduct and Ethical Standards.**

##### **R33-24-101. Unlawful Conduct.**

Unlawful conduct shall be governed in accordance with the requirements set forth in Sections 63G-6a-2401 through 2407. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

##### **R33-24-102. Laws and Executive Orders Pertaining to Gifts, Meals, and Gratuities for Executive Branch Procurement Professionals.**

- (1) Each executive branch employee classified as a "Procurement Professional" shall be governed by:
  - (a) Part 24 of the Utah Procurement Code, "Unlawful Conduct and Penalties."
  - (b) Executive Order EO/003/2010 issued by the Governor (<http://www.rules.utah.gov/execdoks/2010/ExecDoc149415.htm>);
  - (c) Title 67, Part 16 "Utah Public Officers' and Employees' Ethics Act;"
  - (d) Section 76-8-103, "Bribery or Offering a Bribe;" and
  - (e) any other applicable law.

##### **R33-24-103. Laws and Executive Orders Pertaining to Gifts, Meals, and Gratuities for Executive Branch Employees.**

- (1) Each executive branch employee not classified as a "Procurement Professional" shall be governed by:
  - (a) Executive Order EO/003/2010 issued by the Governor (<http://www.rules.utah.gov/execdoks/2010/ExecDoc149415.htm>);
  - (c) Title 67, Part 16 "Utah Public Officers' and Employees' Ethics Act;"
  - (d) Section 76-8-103, "Bribery or Offering a Bribe;" and
  - (e) any other applicable law.

##### **R33-24-104. Socialization with Vendors and Contractors.**

- (1) A procurement professional shall not:
  - (a) participate in social activities with vendors or contractors that will interfere with the proper performance of the procurement professional's duties;

- (b) participate in social activities with vendors or contractors that will lead to unreasonably frequent disqualification of the procurement professional from the procurement process; or
  - (c) participate in social activities with vendors or contractors that would appear to a reasonable person to undermine the procurement professional's independence, integrity, or impartiality.
- (2) If an executive branch procurement professional participates in a social activity prohibited under R33-24-104(1), or has a close personal relationship with a vendor or contractor, the procurement professional shall promptly notify their supervisor and the supervisor shall take the appropriate action, which may include removal of the procurement professional from the procurement or contract administration process that is affected.

### **R33-24-105. Financial Conflict of Interests Prohibited.**

- (1) A procurement conflict of interest is a situation in which the potential exists for an executive branch employee's personal financial interests, or for the personal financial interests of a family member, to influence, or have the appearance of influencing, the employee's judgment in the execution of the employee's duties and responsibilities when conducting a procurement or administering a contract.
- (2) In order to preserve the integrity of the State's procurement process, an executive branch employee may not take part in any procurement process, contracting or contract administration decision:
- (a) relating to the employee or a family member of the employee; or
  - (b) relating to any entity in which the employee or a family member of the employee is an officer, director or partner, or in which the employee or a family member of the employee owns or controls 10% or more of the stock of such entity or holds or directly or indirectly controls an ownership interest of 10% or more in such entity.
- (3) If a procurement process, contracting or contract administration matter arises relating to the employee or a family member of the employee, the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the procurement, contracting or administration matter. The employee must also comply with all disclosure requirements in Utah Code Title 67 Chapter 16, Utah Public Officers' and Employees' Ethics Act.

### **R33-24-106. Personal Relationship, Favoritism, or Bias Participation Prohibitions.**

- (1) Executive branch employees are prohibited from participating in any and all discussions or decisions relating to the procurement, contracting or administration process if they have any type of personal relationship, favoritism, or bias that would appear to a reasonable person to influence their independence in performing their assigned duties and responsibilities relating to the procurement process, contracting or contract

administration or prevent them from fairly and objectively evaluating a proposal in response to a bid, RFP or other solicitation. This provision shall not be construed to prevent an employee from having a bias based on the employee's review of a response to the solicitation in regard to the criteria in the solicitation.

- (2) If an executive branch employee has a personal relationship, favoritism, or bias toward any individual, group, organization, or vendor responding to a bid, RFP or other solicitation, the employee must make a written disclosure to the supervisor and the supervisor shall take appropriate action, which may include recusing the employee from any and all discussions or decisions relating to the solicitation, contracting or administration matter in question. This provision shall not be construed to prevent an employee from having a bias based on the employee's review of a response to the solicitation in regard to the criteria in the solicitation.

### **R33-24-107. Professional Relationships and Social Acquaintances Not Prohibited.**

- (1) It is not a violation for an executive branch employee who participates in discussions or decisions relating to the procurement, contracting or administration process to have a professional relationship or social acquaintance with a person, contractor or vendor responding to a solicitation, or that is under contract with the State, provided that there is compliance with Section R33-24-105, Section R33-24-106, the Utah Public Officers' and Employees' Ethics Act, The Governor's Executive Order (EO 002 2014) "Establishing an Ethics Policy for Executive Branch Agencies and Employees," and other applicable State laws.

### **R33-24-108. Ethical Standards for an Employee of a Procurement Unit Involved in the Procurement Process.**

An employee of a procurement unit involved in the procurement process shall uphold and promote the independence, integrity, and impartiality of the procurement process as required in the Utah Procurement Code and, as applicable, Title R33 and shall avoid impropriety and the appearance of impropriety.

**KEY: executive branch employees, procurement code, procurement professionals, unlawful conduct**  
**Date of Enactment or Last Substantive Amendment: August 22, 2016**  
**Authorizing, and Implemented or Interpreted Law: 63G-6a**



## **R33. Administrative Services, Purchasing and General Services.**

### **R33-25. Executive Branch Insurance Procurement.**

#### **R33-25-101. Applicability and Standard Procurement Method.**

- (1) This rule only applies to executive branch procurement units.
- (2) All new or renewal insurance purchases will be made in accordance with this Rule and the Utah Procurement Code. In addition, the following shall be considered:
  - (a) financial resources of agent, broker and underwriting company;
  - (b) quality of prior service rendered to the state;
  - (c) service facilities available in-state;
  - (d) service reputation;
  - (e) experience and expertise in providing similar types of insurance;
  - (f) coverages and services to be provided;
  - (g) qualifications of key personnel; and
  - (h) any other reasonable factor which will provide the best possible coverage and service to the purchasing agency.

#### **R33-25-102. Alternate Multiple Stage Bid Process.**

- (1) To avoid oversaturation of limited primary or reinsurance markets, a multiple stage bid process may be used at the option of the procurement unit.
- (2) All interested agents and brokers must be qualified according to the evaluation criteria described in R33-25-101.
- (3) No more than the three highest ranked brokers or agents, as determined by the evaluation committee, will be eligible to proceed to the final stage.
- (4) Those who are eligible to proceed to the final stage must submit a list of markets in order of preference to the procurement unit. The procurement unit will, as equitably as practicable, assign no more than five and no less than three markets to each final bidder, based upon their preferences.
- (5) Eligible brokers or agents must then submit a responsive and responsible bid for each assigned market.
- (6) Upon receipt of the bids, the procurement and contract award shall be conducted in accordance with Part 6 of the Utah Procurement Code.

**KEY: alternate multiple stage bid process, executive branch insurance procurement, procurement methods, government purchasing**

**Date of Enactment or Last Substantive Amendment: July 8, 2014**

**Authorizing, and Implemented or Interpreted Law: 63G-6a**

## **R33. Administrative Services, Purchasing and General Services.**

### **R33-26. State Surplus Property.**

#### **R33-26-101. State Surplus Property - General.**

This rule sets forth policies and procedures which govern the acquisition and disposition of state and federal surplus property, and vehicles. It applies to all state and local public agencies and eligible non-profit educational and health institutions when dealing with federal surplus property. It also applies to all state agencies unless specifically exempted by law and to the general public when dealing with state surplus property.

#### **R33-26-102. Requirements.**

Under the provisions of Section 63A, Chapter 2, Section 103, the Division of Purchasing and General Services shall manage and administer the State's surplus property program, including:

- (1) The federal surplus property program as the Utah State Agency for Surplus Property and in compliance with 41 CFR 102-37 and Public Law 94-519 through a State Plan of Operation. The standards and procedures governing the contract between the state and the federal government are contained in the Plan of Operation.
- (2) The disposition of state owned surplus property, including vehicles and non-vehicle surplus property.
- (3) Information technology equipment.

#### **R33-26-103. Definitions.**

- (1) Terms used in the Surplus Property Rules are defined in Section 63A-2-101.5.
- (2) In addition:
  - (a) "All-terrain type I vehicle" means any motor vehicle 52 inches or less in width, having an unladen dry weight of 1,500 pounds or less, traveling on three or more low pressure tires, having a seat designed to be straddled by the operator, and designed for or capable of travel over unimproved terrain;
  - (b) "All-terrain type II vehicle" means any other motor vehicle, not defined in Subsection (2), (11), or (22), designed for or capable of travel over unimproved terrain and includes a class A side-by-side vehicle. "All-terrain type II vehicle" does not include golf carts, any vehicle designed to carry a person with a disability, any vehicle not specifically designed for recreational use, or farm tractors as defined under Section 41-1a-102.
- (3) "Aircraft" means any contrivance now known or in the future invented, used, or designed for navigation of or flight in the air.
- (4) "Bundled sale" means the act of packaging or grouping multiple State surplus property items together for the purpose of offering those items for sale in a single transaction in

which the buyer receives all surplus property items bundled together and sold in the transaction.

- (5) "Camper" means any structure designed, used, and maintained primarily to be mounted on or affixed to a motor vehicle that contains a floor and is designed to provide a mobile dwelling, sleeping place, commercial space, or facilities for human habitation or for camping.
- (6) "Disposition" means the act of selling, disposing, or transferring state-owned vehicle and non-vehicle property, declared to be surplus property, to the care, custody, or possession of another person.
- (7) "Division" means the Division of Purchasing and General Services within the Department of Administrative Services created under Section 63A-2-101.
- (8) "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.
- (9) "Motorboat" means any vessel propelled by machinery, whether or not the machinery is the principal source of propulsion.
- (10) "Motorcycle" means a motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.
- (11) "Motor vehicle" means a self-propelled vehicle intended primarily for use and operation on the highways.
- (12) "Off-highway vehicle" means any snowmobile, all-terrain type I vehicle, all-terrain type II vehicle, or motorcycle.
- (13) As used in this section "Personal handheld electronic device":
  - (a) means an electronic device that is designed for personal handheld use and permits the user to store or access information, the primary value of which is specific to the user of the device; and,
  - (b) includes a mobile phone, pocket personal computer, personal digital assistant, wireless, or similar device.
- (14) "Personal Watercraft" means a motorboat that is:
  - (a) less than 16 feet in length;
  - (b) propelled by a water jet pump; and
  - (c) designed to be operated by a person sitting, standing or kneeling on the vessel, rather than sitting or standing inside the vessel.
- (15)(a) "Pickup truck" means a two-axle motor vehicle with motive power manufactured, remanufactured, or materially altered to provide an open cargo area.
  - (b) "Pickup truck" includes motor vehicles with the open cargo area covered with a camper, camper shell, tarp, removable tarp, or similar structure.
- (16) "Reconstructed vehicle" means every vehicle type required to be registered in this state that is materially altered from its original construction by the removal, addition, or substitution of essential parts, new or used.

- (17)(a) "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, that is either self-propelled or pulled by another vehicle.
- (b) "Recreational vehicle" includes:
- (i) a travel trailer;
  - (ii) a camping trailer;
  - (iii) a motor home;
  - (iv) a fifth wheel trailer; and
  - (v) a van.
- (18) "Road tractor" means every motor vehicle designed and used for drawing other vehicles and constructed so it does not carry and load either independently or any part of the weight of a vehicle or load this is drawn.
- (19) "Sailboat" means any vessel having one or more sails and propelled by wind.
- (20) "Semitrailer" means every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that some part of its weight and its load rests or is carried by another vehicle.
- (21)(a) "Special mobile equipment" means every vehicle:
- (i) not designed or used primarily for the transportation of persons or property;
  - (ii) not designed to operate in traffic; and
  - (iii) only incidentally operated or moved over the highways.
- (b) "special mobile equipment" includes:
- (i) farm tractors;
  - (ii) on or off-road motorized construction or maintenance equipment including backhoes, bulldozers, compactors, graders, loaders, road rollers, tractors, and trenchers;
  - (iii) ditch-digging apparatus; and
  - (iv) forklifts, warehouse equipment, golf carts, electric carts, etc.
- (22) "Trailer" means a vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.
- (23) "Travel trailer," "camping trailer," or "fifth wheel trailer" means a portable vehicle without motive power, designed as a temporary dwelling for travel, recreational, or vacation use that does not require a special highway movement permit when drawn by a self-propelled motor vehicle.
- (24) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load that is drawn.
- (25) "USASP" means Utah State Agency for Surplus Property.

(26) "Vehicle" means:

(a) as defined in Rule R33-25-103:

- (i) all-terrain vehicle type I and II,
- (ii) aircraft,
- (iii) camper,
- (iv) farm tractor,
- (v) motor boat,
- (vi) motorcycle,
- (vii) motor vehicle,
- (viii) off highway vehicle,
- (ix) personal watercraft,
- (x) pickup truck,
- (xi) reconstructed vehicle,
- (xii) recreational vehicle,
- (xiii) road tractor,
- (xiv) sailboat,
- (xv) semitrailer,
- (xvi) special mobile equipment,
- (xvii) trailer,
- (xviii) travel trailer,
- (xix) truck tractor,
- (xx) vessel; and

(27) "Vessel" means every type of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

### **R33-26-201. Non-vehicle Disposition Procedures.**

(1) State-owned non-vehicle personal property shall not be destroyed, sold, transferred, traded-in, traded, discarded, donated or otherwise disposed of unless the procedures set forth in this Rule are followed.

(2) This rule applies to and includes any residue that may be remaining from agency cannibalization of property.

(3) When a department or agency of state government determines that state-owned non-vehicle personal property is in excess to current needs, it will:

- (a) transfer the non-vehicle surplus property directly to another department or agency of the state without involvement of the division; or
- (b) notify state surplus property that the department or agency has surplus property.

### **R33-26-202. Disposal of State-Owned Surplus Electronic Data Devices.**

- (1) For the purpose of this rule, Electronic Data Device means an electronic device capable of downloading, storing or transferring State-owned data. Electronic Data Devices include:
  - (a) Computers;
  - (b) Tablets (iPads, Surface Pro, Google Nexus, Samsung Galaxy, etc.);
  - (c) Smart phones;
  - (d) Personal Digital Assistants (PDAs);
  - (e) Digital copiers and multifunction printers;
  - (f) Flash drives and other portable data storage devices; and
  - (g) Other similar devices.
- (2) The State has determined that the security risk of a potential data breach resulting from the improper disposal or sale of an electronic data device, as defined in this rule, outweigh the potential revenue that may be received by the State from the sale of an electronic data device deemed surplus property. Therefore, the State has adopted this Administrative Rule regarding the proper disposal of State-owned surplus electronic data devices:
  - (a) Each State agency shall ensure that all surplus State-owned electronic data devices are disposed of in accordance with the following procedures.
  - (b) Surplus State-owned electronic devices defined under this Rule may not be sold or gifted via on-line auction or any other means.
  - (c) Surplus State-owned electronic data devices must be disposed of through the vendor under contract with the State, unless a separate contractual agreement has been entered into with the manufacturer or supplier of the device for proper destruction and disposal.
  - (d) The Division of Purchasing shall enter into a contract with a vendor for the destruction and proper disposal of all State-owned surplus electronic data devices.
  - (e) Proper disposal includes:
    - (i) Recycling components and parts after the State-owned electronic data device has been destroyed to the point that State-owned data cannot be retrieved;
    - (ii) Disposal in a landfill approved for electronic waste after the State-owned electronic data device has been destroyed to the point that State-owned data cannot be retrieved; or
    - (iii) Computers, digital copiers and multifunction printers that have had the hard drive destroyed may be resold by the contractor.
  - (f) State agencies shall request assistance from the Department of Technology Services (DTS) to destroy the hard drives of computers and other State-owned surplus electronic data devices purchased through DTS prior to the agency transferring the devices to the vendor under contract with the State.

- (g) State agencies shall contact the vendor under contract with the State to destroy and properly dispose of all other State-owned surplus electronic data communication devices.

### **R33-26-203. Information Technology Equipment.**

- (1) Subject to Subsections R33-26-202(1) and (2), State-owned information technology equipment may be transferred directly to public institutions, such as schools and libraries, by the owning agency, contingent upon certification and approval from the Department of Technology Services that all State-owned data has been removed from the equipment.
- (2) Subject to Subsections R33-26-202(1) and (2), pursuant to the provisions of Section 63A-2-407, state-owned information technology equipment may be transferred directly to non-profit entities for distribution to, and use by, persons with a disability as defined in Subsection 62A-5-101(9). However, interagency transfers shall have priority over transfers under this subsection.
- (3) Prior to submitting information technology equipment to the state surplus property contractor, another department or agency, or donating it directly to public institutions or non-profit entities, agencies shall comply with the provisions of Section R33-26-202.
- (4) Subject to Subsections R33-26-202(1) and (2), except as it relates to a vehicle or federal surplus property, the transfer of surplus property from one agency directly to another does not require approval by the division, the director of the division, or any other person.

### **R33-26-204. Federal Surplus Property.**

- (1) Federal Surplus Property is not available for sale to the general public. Donation of federal surplus property shall be administered in accordance with the procedures identified in the State Plan of Operation for the Federal Property Assistance Program.
- (2) Public auctions of federal surplus property are authorized under certain circumstances and conditions. The division shall coordinate such auctions when deemed necessary or appropriate. Federal surplus property auctions are primarily conducted online, but are regulated and accomplished by the U.S. General Services Administration.

### **R33-26-205. Related Party Transactions.**

- (1) The division has a duty to the public to ensure that State-owned surplus property is disposed of in accordance with Section 63A-2. A conflict of interest may exist or appear to exist when a related party attempts to purchase surplus property.
- (2) A related party is defined as someone who may fit into any of the following categories pertaining to the surplus property in question:
  - (a) has purchasing authority;
  - (b) has maintenance authority;

- (c) has disposition or signature authority;
- (d) has authority regarding the disposal price;
- (e) has access to restricted information; and
- (f) has perceived to be a related party using other criteria which may prohibit independence.

### **R33-26-206. Priorities.**

- (1) Public agencies are given priority for the purchase of state-owned surplus property.
- (2) Property that is determined by the Division to be unique, in short supply or in high demand by public agencies may be held for a period of up to 30 days before being offered for sale to the general public by surplus property.
- (3) For this Rule, the entities listed below, in priority order, are considered to be public agencies:
  - (a) state Agencies;
  - (b) state Universities, Colleges, and Community Colleges;
  - (c) other tax supported educational agencies or political subdivisions in the State of Utah including cities, towns, counties and local law enforcement agencies;
  - (d) other tax supported educational entities; then
  - (e) non-profit health and educational institutions.
- (4) State-owned personal property that is not purchased by or transferred to public agencies may be offered for public sale.
- (5) The division shall make the determination as to whether property is subject to hold period. The decision shall consider the following:
  - (a) the cost to the state;
  - (b) the potential liability to the state;
  - (c) the overall best interest of the state.

### **R33-26-301. Accounting and Reimbursement Procedures.**

- (1) The division will record and maintain records of all transactions related to the acquisition and sale of all state and federal surplus property.
- (2) The division may maintain a federal working capital reserve not to exceed one year's operating expenses. In the event the division accumulates funds in excess of the allowable working capital reserve, they will reduce the Retained Earnings balance accordingly. The only exception is where the division is accumulating excess funds in anticipation of the purchase of new facilities or capital items. Prior to the accumulation of excess funds, the division must obtain the written approval of the Executive Director of the Department of Administrative Services.



### **R33-26-302. Reimbursement.**

- (1) Reimbursement to state agencies from the sale of their vehicles and non-vehicle items will be made through the Division of Finance on interagency transfers or warrant requests. The division is authorized to deduct operating costs from the selling price of all vehicles and non-vehicle items. In all cases property will be priced to sale for fair market value. Items that are not marketable for whatever reason may be discounted in price or disposed of by abandonment, donation, or sold as scrap.
- (2) Payment for vehicles, non-vehicle items, information technology equipment, federal surplus property, and personal handheld devices shall be as follows:
  - (a) payment received from public purchasers may be in the form of cash and/or certified funds, authorized bank financial cards, and personal checks. Personal checks may not be accepted for amounts exceeding \$100. Two-party checks shall not be accepted;
  - (b) payment received from governmental entities, school districts, special districts, and higher education institutions shall be in the form of agency or subdivision check or purchasing card;
  - (c) payment made by governmental entities, school districts, special districts, and higher education institutions shall be at the time of purchase and prior to removal of the property purchased; or
  - (d) the division director or designee may make exceptions to the payment provisions of this rule for good cause. A good cause exception requires a weighing of:
    - (i) the cost to the state;
    - (ii) the potential liability to the state; and
    - (iii) the overall best interest of the state.
- (3) The division shall initiate formal collection procedures in the event that a check from the general public, state subdivisions, or other agencies is returned to the division for "insufficient funds":
  - (a) in the event that a check is returned to the division is returned for "insufficient fund," the division may:
    - (i) prohibit the debtor from making any future purchases from the division until the debt is paid in full; and
    - (ii) have the division accountant send a certified letter to the debtor stating that the debtor has 15 days to pay the full amount owed with cash or certified funds, including any and all additional fees associated with the collection process, such as returned check fees; and if the balance is not paid within the 15 day period, the matter will be referred to the Office of State Debt Collection for formal collection proceedings.
  - (b) debts for which payments have not been received in full within the 15 day period referred to above, shall be assigned to the Office of State Debt Collection in accordance with statute.

### **R33-26-401. Public Sale of State-Owned Vehicles.**

- (1) State-owned excess vehicles may be purchased at any time by the general public, subject to any holding period that may be assigned by the division and subject to the division's operating days and hours.
- (2) Federal surplus property auctions to the general public may be accomplished on occasions and subject to the limitations as indicated previously.
- (3) The frequency of public auctions, for either State-owned vehicles or federal surplus property will be regulated by current law as applicable, the volume of items held in inventory by the division, and the profitability of conducting auctions versus other approaches to disposing of surplus property.
- (4) State-owned vehicles available for sale may not have any ancillary or component parts or equipment removed, destroyed, or detached, from the vehicle prior to sale without the approval of the division.
- (5) State agencies are prohibited from removing ancillary or component parts or equipment from vehicles intended for surplus unless:
  - (a) the state agency intends on using the ancillary or component parts or equipment on other agency vehicles;
  - (b) the state agency in possession of the vehicle intends to transfer the ancillary or component parts or equipment to another state agency; or
  - (c) the state agency has obtained prior approval from the division to remove ancillary or component parts or equipment from the vehicle intended for surplus.

### **R33-26-601. Utah State Agency for Surplus Property Adjudicative Proceedings.**

As required by the Utah Administrative Procedures Act, this Rule provides the procedures for adjudicating disputes brought before the division under the authority granted by Section 63A-2-401 and Section 63G-4, et seq.

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### **R33-26-602. Proceedings to Be Informal.**

All matters over which the division has jurisdiction including bid validity determination and sales issues, which are subject to Title 63G, Chapter 4, will be informal in nature for purposes of adjudication. The Director of the Division of Purchasing and General Services or his designee will be the presiding officer.

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### **R33-26-603. Procedures Governing Informal Adjudicatory Proceedings.**

- (1) No response need be filed to the notice of agency action or request for agency action.
- (2) The division may hold a hearing at the discretion of the director of the Division of Purchasing and General Services or his designee unless a hearing is required by statute. A request for hearing must be made within ten days after receipt of the notice of agency action or request for agency action.

- (3) Only the parties named in the notice of agency action or request for agency action will be permitted to testify, present evidence and comment on the issues.
- (4) A hearing will be held only after timely notice of the hearing has been given.
- (5) No discovery, either compulsory or voluntary, will be permitted except that all parties to the action shall have access to information and materials not restricted by law.
- (6) No person may intervene in an agency action unless federal statute or rule requires the agency to permit intervention.
- (7) Any hearing held under this rule is open to all parties.
- (8) Within thirty days after the close of any hearing, the director of the Division of Purchasing and General Services or his designee shall issue a written decision stating the decision, the reasons for the decision, time limits for filing an appeal with the director of the superior agency, notice of right of judicial review, and the time limits for filing an appeal to the appropriate district court.
- (9) The decision rendered by the Director of the Division of Purchasing and General Services or his designee shall be based on the facts in the division file and if a hearing is held, the facts based on evidence presented at the hearing.
- (10) The agency shall notify the parties of the agency order by promptly mailing a copy thereof to each at the address indicated in the file.
- (11) Whether a hearing is held or not, an order issued under the provisions of this rule shall be the final order and then may be appealed to the appropriate district court.

**R33-26-701. Disposition of State Surplus Property.**

- (1) The Division shall administer the disposition of State surplus property through the following methods:
  - (a) Online auction;
  - (b) Live auction;
  - (c) Pick up, sale, and disposal;
  - (d) Disposal;
  - (e) Destruction;
  - (f) Direct sale to the public; or
  - (g) Another method approved by the Director of the Division.
- (2) State agencies shall complete an SP-1 Form and electronically transmit it to State Surplus Property
  - (a) Completion of Form SP-1 meets the requirements set forth in Utah Code 63A-2-401(7) for a state agency to declare State property as surplus.
  - (b) The SP-1 Form may be accessed at <http://purchasing.utah.gov/stateagencylinks.html>.
  - (c) Information required on SP-1 Form

- (A) a minimum of two digital photographs for each State surplus property item being listed for sale
  - (B) a brief description of the State surplus property item detailing its condition
  - (C) an estimate of the State surplus property's value
  - (D) the location of the State surplus property; an
  - (E) the contact information of the person assigned by the state agency to assist the public with the transaction.
- (3) Online auction shall be the primary method used for the disposition of non-vehicle state surplus property.
- (a) Online auctions shall be administered by State Surplus Property.
  - (b) Each state agency will be responsible for
    - (i) Storing State surplus property on site until the online auction has been completed and the State surplus property is
      - (A) picked up by the person to whom the item has been sold to via online auction
      - (B) disposed of or donated by the state agency
      - (C) picked up by the vendor under contract with State Surplus Property; or
      - (D) picked up by a local vendor under contract with the state agency;
    - (ii) Assigning an employee of the agency to assist the public with the online auction including:
      - (A) answering questions about the State surplus property item
      - (B) providing directions
      - (C) scheduling the pickup
      - (D) other miscellaneous tasks; an
    - (iii) Developing internal policies regarding employees
      - (A) assisting the public with lifting and transporting State surplus property items
      - (B) transporting State surplus property items with a minimal value of less than \$100 to charities for donation
      - (C) receiving State surplus property items with a minimal value of less than \$100 as a donation by the state agency
  - (c) A state agency may seek an exception from the requirement to dispose of surplus property through online auction in accordance with Utah Code 63A-2-401(3).
    - (i) State agencies that are granted an exception must
      - (A) complete an SP-1 Form and transmit it to State Surplus Property; and
      - (B) coordinate with State Surplus Property to schedule a date and time for State surplus property items to be picked.
- (4) The Division shall administer the disposition of surplus state owned vehicles through any method identified in R33-26-701(1).

- (a) Surplus vehicles may be sold at the agency location or delivered to State Surplus Property for disposition.
- (5)(a) For agencies along the Wasatch Front, State Surplus Property will contract with a vendor to pick up State surplus property items with a minimal value of less than \$100 that cannot be disposed of by a state agency as waste in the trash, donated to a charity, or donated to an employee of the state agency.
- (b) For agencies with offices outside the Wasatch Front, the agency may contract with a local vendor using the Small Purchase set forth in Utah Code 63G-6a-408 and Administrative Rule R33-4-104 to dispose of State surplus property items with a minimal value of less than \$100 that cannot be disposed of by a state agency as waste in the trash, donated to a charity, or donated to an employee of the state agency.

**R33-26-801. Donation, Disposal, or Destruction of State Surplus Property.**

- (1)(a) State surplus property with a minimal value of less than \$100 may be disposed of as waste by a state agency in accordance with Utah Code 63A-2-411.
- (b) State surplus property items that do not appreciate in value, with an initial purchase price of less than \$100 or deemed to be valued at less than \$100 by the State Surplus Property manager:
  - (i) may be disposed of as waste by a state agency by the means described in Utah Code 63A-2-411(3); or
  - (ii) State surplus Property items with a minimal value may be packaged together and sold as a bundled sale.

**KEY: government purchasing, procurement rules, state surplus property, general procurement provisions**

**Date of Enactment or Last Substantive Amendment: December 23, 2015**

**Authorizing, Implemented, or Interpreted Law: 63A-2**