

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

PROCUREMENT PROCESS AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to the procurement process.

Highlighted Provisions:

This bill:

► adds to the criteria that can be considered in evaluating a bid or proposal whether the contractor and subcontractor:

- employ an individual with OSHA training; and
- will assign to the project an individual with oversight responsibility for safety at the site.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-6a-606, as last amended by Laws of Utah 2016, Chapter 355

63G-6a-707, as last amended by Laws of Utah 2016, Chapters 237 and 355

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **63G-6a-606** is amended to read:



28 **63G-6a-606. Evaluation of bids -- Award -- Cancellation -- Rejecting a bid.**

29 (1) A procurement unit that conducts a procurement using a bidding standard
30 procurement process shall evaluate each bid using the objective criteria described in the
31 invitation for bids, which may include:

- 32 (a) experience;
- 33 (b) performance ratings;
- 34 (c) inspection;
- 35 (d) testing;
- 36 (e) quality;
- 37 (f) workmanship;
- 38 (g) time and manner of delivery;
- 39 (h) references;
- 40 (i) financial stability;
- 41 (j) cost;
- 42 (k) suitability for a particular purpose;
- 43 (l) the contractor's work site safety program, including any requirement that the
44 contractor imposes on subcontractors for a work site safety program; ~~[or]~~
- 45 (m) whether the contractor and each subcontractor:
- 46 (i) employs an individual who has received safety training sanctioned by the federal
47 Occupational Safety and Health Administration; and
- 48 (ii) will assign to the project a safety director or manager or other individual who will
49 have oversight responsibility for safety at the site; or
- 50 ~~[(m)]~~ (n) other objective criteria specified in the invitation for bids.

51 (2) Criteria not described in the invitation for bids may not be used to evaluate a bid.

52 (3) The conducting procurement unit shall:

53 (a) award the contract as soon as practicable to:

54 (i) the responsible bidder who submits the lowest responsive bid that meets the
55 objective criteria described in the invitation for bids; or

56 (ii) if, in accordance with Subsection (4), the procurement officer or the head of the
57 conducting procurement unit rejects a bid described in Subsection (3)(a)(i), the responsible
58 bidder who submits the next lowest responsive bid that meets the objective criteria described in

59 the invitation for bids; or

60 (b) cancel the invitation for bids without awarding a contract.

61 (4) In accordance with Subsection (5), the procurement officer or the head of the
62 conducting procurement unit may reject a bid for:

63 (a) a violation of this chapter by the bidder who submitted the bid;

64 (b) a violation of a requirement of the invitation for bids;

65 (c) unlawful or unethical conduct by the bidder who submitted the bid; or

66 (d) a change in a bidder's circumstance that, had the change been known at the time the
67 bid was submitted, would have caused the bid to be rejected.

68 (5) A procurement officer or head of a conducting procurement unit who rejects a bid
69 under Subsection (4) shall:

70 (a) make a written finding, stating the reasons for the rejection; and

71 (b) provide a copy of the written finding to the bidder who submitted the rejected bid.

72 (6) If a conducting procurement unit cancels an invitation for bids without awarding a
73 contract, the conducting procurement unit shall make available for public inspection a written
74 justification for the cancellation.

75 Section 2. Section **63G-6a-707** is amended to read:

76 **63G-6a-707. Evaluation of proposals -- Evaluation committee.**

77 (1) To determine which proposal provides the best value to the procurement unit, the
78 evaluation committee shall evaluate each responsive and responsible proposal that has not been
79 disqualified from consideration under the provisions of this chapter, using the criteria described
80 in the request for proposals, which may include:

81 (a) experience;

82 (b) performance ratings;

83 (c) inspection;

84 (d) testing;

85 (e) quality;

86 (f) workmanship;

87 (g) time, manner, or schedule of delivery;

88 (h) references;

89 (i) financial solvency;

- 90 (j) suitability for a particular purpose;
- 91 (k) management plans;
- 92 (l) the presence and quality of a work site safety program, including any requirement
- 93 that the offeror imposes on subcontractors for a work site safety program;
- 94 (m) whether the contractor and each subcontractor:
- 95 (i) employs an individual who has received safety training sanctioned by the federal
- 96 Occupational Safety and Health Administration; and
- 97 (ii) will assign to the project a safety director or manager or other individual who will
- 98 have oversight responsibility for safety at the site;
- 99 [~~m~~] (n) cost; or
- 100 [~~m~~] (o) other subjective or objective criteria specified in the request for proposals.
- 101 (2) Criteria not described in the request for proposals may not be used to evaluate a
- 102 proposal.
- 103 (3) (a) For a procurement of administrative law judge service, an evaluation committee
- 104 shall consist of:
- 105 (i) the head of the conducting procurement unit, or the head's designee;
- 106 (ii) the head of an executive branch procurement unit other than the conducting
- 107 procurement unit, appointed by the executive director of the Department of Human Resource
- 108 Management, or the head's designee; and
- 109 (iii) the executive director of the Department of Human Resource Management, or the
- 110 executive director's designee.
- 111 (b) For every other procurement requiring an evaluation by an evaluation committee,
- 112 the conducting procurement unit shall:
- 113 (i) appoint an evaluation committee consisting of at least three individuals with at least
- 114 a general familiarity with or basic understanding of:
- 115 (A) the technical requirements relating to the type of procurement item that is the
- 116 subject of the procurement; or
- 117 (B) the need that the procurement item is intended to address; and
- 118 (ii) ensure that the evaluation committee and each individual participating in the
- 119 evaluation committee process:
- 120 (A) does not have a conflict of interest with any of the offerors;

- 121 (B) can fairly evaluate each proposal;
- 122 (C) does not contact or communicate with an offeror concerning the procurement
- 123 outside the official evaluation committee process; and
- 124 (D) conducts or participates in the evaluation in a manner that ensures a fair and
- 125 competitive process and avoids the appearance of impropriety.
- 126 (4) A conducting procurement unit may authorize an evaluation committee to receive
- 127 assistance:
- 128 (a) from an expert or consultant who:
- 129 (i) is not a member of the evaluation committee; and
- 130 (ii) does not participate in the evaluation scoring; and
- 131 (b) to better understand a technical issue involved in the procurement.
- 132 (5) (a) An evaluation committee may, with the approval of the head of the conducting
- 133 procurement unit, enter into discussions or conduct interviews with, or attend presentations by,
- 134 the offerors, for the purpose of clarifying information contained in proposals.
- 135 (b) In a discussion, interview, or presentation under Subsection (5)(a), an offeror:
- 136 (i) may only explain, illustrate, or interpret the contents of the offeror's original
- 137 proposal; and
- 138 (ii) may not:
- 139 (A) address criteria or specifications not contained in the offeror's original proposal;
- 140 (B) correct a deficiency, inaccuracy, or mistake in a proposal that is not an immaterial
- 141 error;
- 142 (C) correct an incomplete submission of documents that the solicitation required to be
- 143 submitted with the proposal;
- 144 (D) correct a failure to submit a timely proposal;
- 145 (E) substitute or alter a required form or other document specified in the solicitation;
- 146 (F) remedy a cause for an offeror being considered to be not responsible or a proposal
- 147 not responsive; or
- 148 (G) correct a defect or inadequacy resulting in a determination that an offeror does not
- 149 meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds
- 150 established in the solicitation.
- 151 (6) (a) Except as provided in Subsection (7)(b) relating to access to management fee

152 information, and except as provided in Subsection (9), each member of the evaluation
153 committee is prohibited from knowing, or having access to, any information relating to the
154 cost, or the scoring of the cost, of a proposal until after the evaluation committee submits its
155 final recommended scores on all other criteria to the issuing procurement unit.

156 (b) The issuing procurement unit shall:

157 (i) if applicable, assign an individual who is not a member of the evaluation committee
158 to calculate scores for cost based on the applicable scoring formula, weighting, and other
159 scoring procedures contained in the request for proposals;

160 (ii) review the evaluation committee's scores and correct any errors, scoring
161 inconsistencies, and reported noncompliance with this chapter;

162 (iii) add the scores calculated for cost, if applicable, to the evaluation committee's final
163 recommended scores on criteria other than cost to derive the total combined score for each
164 responsive and responsible proposal; and

165 (iv) provide to the evaluation committee the total combined score calculated for each
166 responsive and responsible proposal, including any applicable cost formula, weighting, and
167 scoring procedures used to calculate the total combined scores.

168 (c) The evaluation committee may not:

169 (i) change its final recommended scores described in Subsection (6)(a) after the
170 evaluation committee has submitted those scores to the issuing procurement unit; or

171 (ii) change cost scores calculated by the issuing procurement unit.

172 (7) (a) As used in this Subsection (7), "management fee" includes only the following
173 fees of the construction manager/general contractor:

174 (i) preconstruction phase services;

175 (ii) monthly supervision fees for the construction phase; and

176 (iii) overhead and profit for the construction phase.

177 (b) When selecting a construction manager/general contractor for a construction
178 project, the evaluation committee:

179 (i) may score a construction manager/general contractor based upon criteria contained
180 in the solicitation, including qualifications, performance ratings, references, management plan,
181 certifications, and other project specific criteria described in the solicitation;

182 (ii) may, as described in the solicitation, weight and score the management fee as a

183 fixed rate or as a fixed percentage of the estimated contract value;

184 (iii) may, at any time after the opening of the responses to the request for proposals,
185 have access to, and consider, the management fee proposed by the offerors; and

186 (iv) except as provided in Subsection (9), may not know or have access to any other
187 information relating to the cost of construction submitted by the offerors, until after the
188 evaluation committee submits its final recommended scores on all other criteria to the issuing
189 procurement unit.

190 (8) (a) The deliberations of an evaluation committee may be held in private.

191 (b) If the evaluation committee is a public body, as defined in Section 52-4-103, the
192 evaluation committee shall comply with Section 52-4-205 in closing a meeting for its
193 deliberations.

194 (9) An issuing procurement unit is not required to comply with Subsection (6) or
195 (7)(b)(iv), as applicable, if the head of the issuing procurement unit or a person designated by
196 rule made by the applicable rulemaking authority:

197 (a) signs a written statement:

198 (i) indicating that, due to the nature of the proposal or other circumstances, it is in the
199 best interest of the procurement unit to waive compliance with Subsection (6) or (7)(b)(iv), as
200 the case may be; and

201 (ii) describing the nature of the proposal and the other circumstances relied upon to
202 waive compliance with Subsection (6) or (7)(b)(iv); and

203 (b) makes the written statement available to the public, upon request.