

Effective 5/12/2015

**Part 15
Design Professional Services**

63G-6a-1501 Title.

This part is known as "Design Professional Services."

Amended by Chapter 218, 2015 General Session

63G-6a-1502 Requirements regarding procurement of design professional services.

- (1) A procurement unit seeking to procure design professional services shall:
 - (a) publicly announce all requirements for those services through a request for statement of qualifications, as provided in this part; and
 - (b) negotiate contracts for design professional services:
 - (i) on the basis of demonstrated competence and qualification for the type of services required; and
 - (ii) at fair and reasonable prices.
- (2) A procurement unit shall procure design professional services as provided in this part, except as otherwise provided in Sections 63G-6a-506, 63G-6a-802, and 63G-6a-803.
- (3) This part does not affect the authority of, and does not apply to procedures undertaken by, a procurement unit to obtain the services of architects or engineers in the capacity of employees of the procurement unit.

Amended by Chapter 355, 2016 General Session

63G-6a-1502.5 Request for statement of qualifications.

- (1) A procurement unit may establish criteria in a request for statement of qualifications by which the qualifications of a design professional, as set forth in a statement of qualifications, will be evaluated, including:
 - (a) the design professional's work history and experience;
 - (b) performance ratings earned by the design professional or references for similar work;
 - (c) any quality assurance or quality control plan;
 - (d) the quality of the design professional's past work product;
 - (e) the time, manner of delivery, and schedule of delivery of the design professional services;
 - (f) the design professional's financial solvency;
 - (g) any management plan, including key personnel and subconsultants for the project; and
 - (h) other project specific criteria that the procurement unit establishes.
- (2) A request for statement of qualifications may not include a request for a price or a cost component for the design professional services.

Enacted by Chapter 218, 2015 General Session

63G-6a-1503 Evaluation committee for design professional services.

- (1) In the procurement of design professional services, the procurement officer or the head of an issuing procurement unit shall encourage design professionals engaged in the lawful practice of their profession to submit a statement of qualifications.
- (2)

- (a) The director of the Division of Facilities Construction and Management shall appoint an evaluation committee for design professional services procurements under its authority.
 - (b) A conducting procurement unit, other than the Division of Facilities Construction and Management, shall appoint an evaluation committee for design professional services procurements under the authority of that procurement unit.
- (3)
- (a) An evaluation committee appointed under Subsection (2) shall consist of at least three members.
 - (b) A procurement unit appointing an evaluation committee under this section shall ensure that each member of the evaluation committee:
 - (i) does not have a conflict of interest with any of the design professionals under consideration;
 - (ii) can fairly evaluate each statement of qualifications;
 - (iii) does not contact or communicate with any of the design professionals under consideration concerning the request for statement of qualifications outside the official evaluation committee process, beginning the date that the request for statement of qualifications is issued until the selection of the design professional has been made; and
 - (iv) conducts the evaluation in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.
- (4) An evaluation committee appointed under this section shall:
- (a) evaluate current statements of qualifications and performance data on file with the procurement unit, together with those that may be submitted by other design professionals in response to the announcement of a proposed contract;
 - (b) consider no fewer than three design professionals; and
 - (c) based upon criteria established and published by the conducting procurement unit, select no fewer than three of the design professionals considered to be the most highly qualified to provide the services required.

Amended by Chapter 218, 2015 General Session

63G-6a-1503.5 Evaluation of statements of qualifications.

- (1) An evaluation committee appointed under Section 63G-6a-1503 shall evaluate and score each responsive statement of qualifications that has not been eliminated from consideration under this chapter, using the criteria described in the request for statement of qualifications.
 - (2) Criteria not described in the request for statement of qualifications may not be used to evaluate a statement of qualifications.
 - (3) An evaluation committee may enter into discussions or conduct interviews with, or attend presentations by, the design professionals whose statements of qualifications are under consideration.
 - (4) An evaluation committee shall rank the top three highest scoring design professionals, in order of their scores, for the purpose of entering into fee negotiations as provided in Section 63G-6a-1505.
 - (5) If fewer than three responsible design professionals submit statements of qualifications that are determined to be responsive, the chief procurement officer or head of a procurement unit with independent procurement authority shall issue a written determination explaining why it is in the best interest of the procurement unit to continue the fee negotiation and the contracting process with less than three design professionals.
- (6)
- (a) The deliberations of an evaluation committee may be held in private.

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

Amended by Chapter 355, 2016 General Session

63G-6a-1504 Selection as part of design-build or lease.

Notwithstanding any other provision of this chapter, design professional services may be procured under Title 63A, Chapter 5, State Building Board - Division of Facilities Construction and Management, as part of the services obtained in a design-build contract or as part of the services obtained in a lease contract for real property, if the qualifications of those providing the design professional services are part of the consideration in the selection process.

Amended by Chapter 218, 2015 General Session

63G-6a-1505 Determination of compensation for design professional services.

- (1) The procurement officer shall award a contract to the qualified design professional whose statement of qualifications was awarded the highest score under Subsection 63G-6a-1503(4) by the evaluation committee, at compensation that the procurement officer determines, in writing, to be fair and reasonable to the procurement unit.
- (2) In making the determination described in Subsection (1), the procurement officer shall take into account:
 - (a) the estimated value, scope, and professional nature of the services; and
 - (b) the complexity of the project or services.
- (3) If the procurement officer is unable to agree to a satisfactory contract with the highest scoring design professional, at a price the procurement officer determines to be fair and reasonable to the procurement unit, the procurement officer shall:
 - (a) formally terminate discussions with that design professional; and
 - (b) undertake discussions with the second highest scoring, qualified design professional.
- (4) If the procurement officer is unable to agree to a satisfactory contract with the second highest scoring design professional, at a price the procurement officer determines to be fair and reasonable to the procurement unit, the procurement officer shall:
 - (a) formally terminate discussions with that design professional; and
 - (b) undertake discussions with the third highest scoring, qualified design professional.
- (5) If the procurement officer is unable to award a contract at a fair and reasonable price to any of the highest scoring design professionals, the procurement officer shall:
 - (a) select additional design professionals; and
 - (b) continue discussions in accordance with this part until an agreement is reached.

Amended by Chapter 218, 2015 General Session

63G-6a-1506 Restrictions on procurement of design professional services.

- (1) Except as provided in Subsection (2), if the division or a procurement unit with independent procurement authority, in accordance with Section 63G-6a-1502, issues a request for statement of qualifications to procure design professional services and provides public notice of the request for statement of qualifications:
 - (a) a public entity inside or outside the state may not submit a proposal in response to the procurement unit's request for statement of qualifications; and

- (b) the procurement unit may not award a contract to a public entity inside or outside the state to perform the design professional services solicited in the request for statement of qualifications.
- (2) Subsection (1) does not apply when the procurement unit is procuring design professional services for contracts related to research activities and technology transfer.

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