

Effective 5/12/2015

Part 2
Government Procurement Private Proposal Program

63N-13-201 Title.

This part is known as the "Government Procurement Private Proposal Program."

Renumbered and Amended by Chapter 283, 2015 General Session

63N-13-202 Definitions.

As used in this part:

- (1) "Affected department" means, as applicable, the Board of Education or the Department of Technology Services.
- (2) "Board" means the Board of Business and Economic Development created under Section 63N-1-401.
- (3) "Board of Education" means the Utah State Board of Education.
- (4) "Chief procurement officer" means the chief procurement officer appointed under Section 63G-6a-302.
- (5) "Committee" means the proposal review committee created under Section 63N-13-204.
- (6) "Day" means a calendar day.
- (7) "Executive Appropriations Committee" means the Legislature's Executive Appropriations Committee.
- (8) "Information technology" has the same meaning as defined in Section 63F-1-102.
- (9) "Private entity" means a person submitting a proposal under this part for the purpose of entering into a project.
- (10) "Project" means the subject of a proposal or an agreement for the procurement or disposal of:
 - (a) information technology or telecommunications products or services; or
 - (b) supplies or services for or on behalf of the Department of Technology Services or the Board of Education.
- (11) "Proposal" means an unsolicited offer by a private entity to undertake a project, including an initial proposal under Section 63N-13-205 and a detailed proposal under Section 63N-13-208.
- (12) "Services" has the same meaning as defined in Section 63G-6a-103.
- (13) "Supplies" has the same meaning as defined in Section 63G-6a-103.
- (14) "Telecommunications" has the same meaning as defined in Section 63F-1-102.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-13-203 Government Procurement Private Proposal Program -- Proposals -- Rulemaking.

- (1) There is created within the office the Government Procurement Private Proposal Program.
- (2) In accordance with this part, the board may:
 - (a) accept a proposal for a project;
 - (b) solicit comments, suggestions, and modifications to a project in accordance with Section 63G-6a-711; and
 - (c) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing requirements, including time limits for any action required by the affected department, a directly affected state entity or school district, or the Governor's Office of

Management and Budget, for the procurement of a project to the extent not governed by Title 63G, Chapter 6a, Utah Procurement Code.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-13-204 Committee for reviewing proposals -- Appointment -- Accepting or rejecting a proposal.

- (1) The executive director shall appoint a committee composed of members of the board to review and evaluate a proposal submitted in accordance with this part.
- (2) The executive director shall determine the number of board members that constitute a committee.
- (3) The committee shall, at all times, consist of less than a quorum of the members of the board, as established under Section 63N-1-401.
- (4) A committee member shall serve on the committee until:
 - (a) replaced by the executive director; or
 - (b) the committee member ceases to be a member of the board.
- (5) The executive director may fill a vacancy among voting members on the committee.
- (6) The committee shall include the following nonvoting members in addition to the members appointed under Subsection (1):
 - (a) a member of the Senate, appointed by the president of the Senate; and
 - (b) a member of the House of Representatives, appointed by the speaker of the House of Representatives, who may not be from the same political party as the member of the Senate appointed under Subsection (6)(a).
- (7)
 - (a) A vacancy among legislative members appointed under Subsection (6) shall be filled by the president of the Senate or the speaker of the House of Representatives, respectively.
 - (b) At the time of appointment or reappointment, the president of the Senate and the speaker of the House of Representatives shall consult to ensure that the legislative members appointed under Subsection (6) are not members of the same political party.
- (8) A committee member is subject to Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act, and any additional requirement established by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (9) The committee shall inform a private entity of the committee's decision to approve or reject a proposal in writing.
- (10) If the committee, in its sole discretion, accepts a proposal, the proposal shall be evaluated under this part.
- (11) If the committee, in its sole discretion, rejects a proposal, the committee shall notify the private entity of the reason for the rejection and shall return any remaining portion of the fee required under Section 63N-13-212.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-13-205 Initial proposal -- Requirements.

- (1) In accordance with this part, a private entity may at any time submit to the committee an initial proposal for a project.
- (2) An initial proposal shall include:
 - (a) a conceptual description of the project;
 - (b) a description of the economic benefit of the project to the state and the affected department;

- (c) information concerning the products, services, and supplies currently being provided by the state, that are similar to the project;
 - (d) an estimate of the following costs associated with the project:
 - (i) design;
 - (ii) implementation;
 - (iii) operation and maintenance; and
 - (iv) any other related project cost; and
 - (e) the name and address of a person who may be contacted for further information concerning the initial proposal.
- (3) A private entity submitting an initial proposal under this section shall pay the fee required by Section 63N-13-212 when the initial proposal is submitted.
 - (4) An initial proposal submitted under this section is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act, until the chief procurement officer initiates a procurement process in accordance with Section 63G-6a-711.
 - (5) The board shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, detailing the portions of an initial proposal that remain protected after the chief procurement officer initiates a procurement process.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-13-206 Review of initial proposal -- Affected department review.

- (1) The committee shall review and evaluate an initial proposal submitted in accordance with:
 - (a) this part; and
 - (b) any rule established by the board under Section 63N-13-203.
- (2) If the committee, in its sole discretion, determines to proceed with the project, the committee shall submit a copy of the initial proposal to:
 - (a) the affected department; and
 - (b) the Governor's Office of Management and Budget.
- (3)
 - (a) An affected department, directly affected state entity, and school district receiving a copy of the initial proposal under Subsection (2) or (4) shall review the initial proposal and provide the committee with any comment, suggestion, or modification to the project.
 - (b) After receiving an initial proposal, the Governor's Office of Management and Budget shall prepare an economic feasibility report containing:
 - (i) information concerning the economic feasibility and effectiveness of the project based upon competent evidence;
 - (ii) a dollar amount representing the total estimated fiscal impact of the project to the affected department and the state; and
 - (iii) any other matter the committee requests or is required by the board by rule.
- (4) In reviewing an initial proposal, the affected department shall share the initial proposal with any other state entity or school district that will be directly affected if the proposal is ultimately adopted, if the confidentiality of the initial proposal is maintained.
- (5) If the committee determines to proceed with the project, the committee shall submit an electronic copy of the initial proposal, including any comment, suggestion, or modification to the initial proposal, to:
 - (a) the chief procurement officer in accordance with Section 63G-6a-711; and
 - (b) the Executive Appropriations Committee, for informational purposes.
- (6) Before taking any action under Subsection (5), the committee shall consider:

- (a) any comment, suggestion, or modification to the initial proposal submitted in accordance with Subsection (3);
- (b) the extent to which the project is practical, efficient, and economically beneficial to the state and the affected department;
- (c) the economic feasibility report prepared by the Governor's Office of Management and Budget; and
- (d) any other reasonable factor identified by the committee or required by the board by rule.

Amended by Chapter 222, 2016 General Session

63N-13-207 Acceptance of initial proposal -- Obtaining detailed proposals.

- (1) If an initial proposal is accepted under Section 63N-13-206, the chief procurement officer shall:
 - (a) take action under Section 63G-6a-711 to initiate a procurement process to obtain one or more detailed proposals using information from portions of the initial proposal that are not protected records under Title 63G, Chapter 2, Government Records Access and Management Act;
 - (b) consult with the committee during the procurement process; and
 - (c) submit all detailed proposals that meet the guidelines established under Subsection 63N-13-208(1), including the detailed proposal submitted by the private entity that submitted the initial proposal for the project, to:
 - (i) the committee; and
 - (ii) the Governor's Office of Management and Budget.
- (2) The office is considered the purchasing agency for a procurement process initiated under this part.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-13-208 Detailed proposal -- Requirements -- Cooperation of affected department.

- (1) A detailed proposal submitted in response to a procurement process initiated under Section 63N-13-207 shall include:
 - (a) a conceptual description of the project, including the scope of the work;
 - (b) a description of the economic benefit of the project to the state and the affected department;
 - (c) an estimate of the design, implementation, operation, maintenance, or other costs associated with the project;
 - (d) information concerning the information technology or telecommunication product and service or other supply or service currently provided by the state that is similar to the project being proposed, if applicable;
 - (e) a statement setting forth the private entity's general plan for financing the project, including any appropriation by the Legislature or other public money and, if applicable, the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity;
 - (f) the name and address of the person who may be contacted for further information concerning the detailed proposal;
 - (g) a statement describing the private entity's experience with other similar projects and a description of why the private entity is best qualified for the project; and
 - (h) any other information:
 - (i) reasonably requested by the affected department or the committee, or required by the board by rule; or

- (ii) that the private entity considers necessary or appropriate to complete or describe the detailed proposal.
- (2) To assist each private entity in preparing a detailed proposal:
 - (a) the affected department shall provide each private entity with access to all information, records, documents, and reports related to the proposal and the project that are designated public records under Title 63G, Chapter 2, Government Records Access and Management Act; and
 - (b) the affected department and the committee shall cooperate with each private entity to assist the private entity in the development of a detailed proposal that is:
 - (i) practical;
 - (ii) efficient; and
 - (iii) economically beneficial to the state and the affected department.
- (3) The committee or any private entity may choose to terminate the development of the detailed proposal at any time before the submission of the detailed proposal to the chief procurement officer under Section 63G-6a-711.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-13-209 Receipt of detailed proposals -- Economic feasibility report -- Acceptance of a detailed proposal.

- (1) If the committee, in its sole discretion, determines that a detailed proposal does not substantially meet the guidelines established under Subsection 63N-13-208(1), the committee may elect not to review the detailed proposal.
- (2)
 - (a) After receiving a detailed proposal, the Governor's Office of Management and Budget shall update the economic feasibility report prepared under Section 63N-13-206.
 - (b) A detailed proposal that is to be reviewed by the committee shall be submitted to the affected department, a directly affected state entity, and a directly affected school district for comment or suggestion.
- (3) In determining which, if any, of the detailed proposals to accept, in addition to the proposal evaluation criteria, the committee shall consider the following factors:
 - (a) any comment, suggestion, or modification offered in accordance with Subsection 63N-13-206(3) or Subsection (2)(b);
 - (b) the economic feasibility report updated in accordance with Subsection (2)(a);
 - (c) the source of funding and any resulting constraint necessitated by the funding source;
 - (d) any alternative funding proposal;
 - (e) the extent to which the project is practical, efficient, and economically beneficial to the state and the affected department; and
 - (f) any other reasonable factor identified by the committee or required by the board by rule.
- (4)
 - (a) If the committee accepts a detailed proposal, the accepted detailed proposal shall be submitted to the board for approval.
 - (b) If the affected department or a directly affected state entity or school district disputes the detailed proposal approved by the board, the Governor's Office of Management and Budget shall consider the detailed proposal and any comment, suggestion, or modification and determine whether to proceed with a project agreement.
 - (c) If there is no funding for a project that is the subject of a detailed proposal and the committee determines to proceed with the project, the office shall submit a report to the Governor's

Office of Management and Budget and an electronic copy of the report to the Executive Appropriations Committee detailing the position of the board, the affected department, a directly affected state entity or school district.

- (5) A detailed proposal received from a private entity other than the private entity that submitted the initial proposal may not be accepted in place of the detailed proposal offered by the private entity that submitted the initial proposal solely because of a lower cost if the lower cost is within the amount of the fee paid by the private entity that submitted the initial proposal for review of the initial proposal.

Amended by Chapter 222, 2016 General Session

63N-13-210 Project agreement.

- (1) If the board accepts the detailed proposal, the executive director shall:
 - (a) prepare a project agreement in consultation with the affected department and any other state entity directly impacted by the detailed proposal; and
 - (b) enter into the project agreement with the private entity.
- (2) A project agreement shall be signed by the executive director, the affected department, a directly affected state entity or school district, and the private entity.
- (3) A project agreement shall include provisions concerning:
 - (a) the scope of the project;
 - (b) the pricing method of the project;
 - (c) the executive director's or the state's ability to terminate for convenience or for default, and any termination compensation to be paid to the private entity, if applicable;
 - (d) the ability to monitor performance under the project agreement;
 - (e) the appropriate limits of liability;
 - (f) the appropriate transition of services, if applicable;
 - (g) the exceptions from applicable rules and procedures for the implementation and administration of the project by the affected department, if any;
 - (h) the clauses and remedies applicable to state contracts under Title 63G, Chapter 6a, Part 12, Contracts and Change Orders; and
 - (i) any other matter reasonably requested by the committee or required by the board by rule.
- (4) An electronic copy of the signed project agreement shall be submitted to:
 - (a) the affected department; and
 - (b) the Executive Appropriations Committee.
- (5) A project agreement is considered a contract under Title 63G, Chapter 6a, Utah Procurement Code.
- (6) The affected department shall implement and administer the project agreement in accordance with rules made under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, except as modified by the project agreement under Subsection (3)(g).

Amended by Chapter 222, 2016 General Session

63N-13-211 Advisory committee.

- (1) The executive director may appoint an advisory committee comprised of:
 - (a) representatives of:
 - (i) the affected department for the proposal;
 - (ii) a directly affected state entity or school district;
 - (iii) the Department of Human Resource Management; and

- (iv) the Division of Risk Management;
 - (b) members of the public; and
 - (c) other members.
- (2) A member of an advisory committee may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
- (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance under Sections 63A-3-106 and 63A-3-107.
- (3) An advisory committee appointed in accordance with Subsection (1) may not participate in the final decision-making of the committee or the board.
- (4) The staff, any outside consultant, and any advisory subcommittee shall:
- (a) provide the committee and the board with professional services, including architectural, engineering, legal, and financial services, to develop rules and guidelines to implement the program described in this part; and
 - (b) assist the committee and the board in:
 - (i) reviewing and commenting on initial proposals;
 - (ii) reviewing and commenting on detailed proposals; and
 - (iii) preparing and negotiating the terms of any project agreement.

Renumbered and Amended by Chapter 283, 2015 General Session

63N-13-212 Private Proposal Expendable Special Revenue Fund -- Fees.

- (1) There is created an expendable special revenue fund within the office called the Private Proposal Expendable Special Revenue Fund.
- (2) Money collected from the payment of a fee required by this part shall be deposited in the Private Proposal Expendable Special Revenue Fund.
- (3) The board or the committee may use the money in the Private Proposal Expendable Special Revenue Fund to offset:
- (a) the expense of hiring staff and engaging any outside consultant to review a proposal under this part; and
 - (b) any expense incurred by the Governor's Office of Management and Budget or the affected department in the fulfillment of its duties under this part.
- (4) The board shall establish a fee in accordance with Section 63J-1-504 for:
- (a) reviewing an initial proposal;
 - (b) reviewing any detailed proposal; and
 - (c) preparing any project agreement.
- (5) The board may waive the fee established under Subsection (4) if the board determines that it is:
- (a) reasonable; and
 - (b) in the best interest of the state.

Renumbered and Amended by Chapter 283, 2015 General Session