

# **Legislative Management Committee Policy H -- Legislative Procurement**

(Adopted February 5, 2020)

(Amended June 13, 2023)

## **Part 1. General Provisions**

### **Section H-101. Superseding prior policy.**

This policy supersedes and replaces the Legislative Management Committee Policy on Legislative Procurement, adopted July 16, 2013.

### **Section H-102. Definitions.**

(1) As used in this policy, the following terms mean the same as the terms are defined in Utah Code Section 63G-6a-103:

- (a) "approved vendor list process;"
- (b) "bidding process;"
- (c) "contract;"
- (d) "contractor;"
- (e) "legislative procurement unit;"
- (f) "procurement;"
- (g) "procurement item;"
- (h) "professional service;"
- (i) "request for proposals;"
- (j) "request for proposals process;"
- (k) "responsible;"
- (l) "responsive;"
- (m) "small purchase process;"
- (n) "solicitation;"
- (o) "solicitation response;"
- (p) "standard procurement process;"
- (q) "state cooperative contract;"
- (r) "tie bid;" and
- (s) "vendor."

(2) As used in this policy:

(a) "Annual cumulative threshold" means the same as that term is defined in Utah Code Section 63G-6a-506.

(b) "Electronic signature" means the same as that term is defined in Utah Code Section 46-4-102.

(c) "Information technology" means the same as that term is defined in Utah Code Section 63F-1-102.

(d) "Mixed procurement item" means:

(i) a procurement item that has features of both a standard procurement item and a professional service procurement item; or

(ii) a standard procurement item that:

(A) consists of information technology; and

(B) requires professional service to customize, modify, or otherwise be acted on to make it meet the legislative procurement unit's purposes for acquiring the standard procurement item.

(e) "New technology" means any invention, discovery, improvement, or innovation that was not available to the legislative procurement unit on the effective date of the contract, whether or not subject to protection under applicable copyright or patent laws, including:

(i) new or emerging processes, information technology, or machines;

(ii) improvements to or new applications of existing processes, information technology, or machines; and

(iii) any new applications of existing processes, information technology, or machines.

(f) "Procurement official" means:

(i) the individual or individuals designated in Section H-103 of this policy; or

(ii) to the extent of the duties and authority delegated under Subsection H-105(2), the employee or employees to whom duties and authority have been delegated under Subsection H-105(2).

(g) "Professional service procurement item" means a procurement item consisting of professional service.

(h) "Single procurement aggregate threshold" means the same as that term is defined in Utah Code Section 63G-6a-506.

(i) "Single solicitation response" means the only responsive solicitation response submitted by a responsible vendor in response to a solicitation.

(j) "Small purchase" means a procurement under Utah Code Section 63G-6a-506 and Part 5, Small Purchases.

(k) "Standard procurement item" means a procurement item other than professional service.

**Section H-103. Designation of procurement officials of legislative procurement units -- Protest officer.**

(1) The following are designated as the procurement official for the applicable legislative procurement unit:

(a) for the Legislature, the president of the Senate and the speaker of the House of Representatives;

(b) for the Senate, the president of the Senate;

(c) for the House of Representatives, the speaker of the House of Representatives;

(d) for the Office of the Legislative Fiscal Analyst, the legislative fiscal analyst;

(e) for the Office of the Legislative Auditor General, the legislative auditor general;

(f) for the Office of Legislative Research and General Counsel:

(i) for the procurement of legal services, legislative general counsel; and

(ii) for any other procurement, the director of the Office of Legislative Research and General Counsel; and

(g) for any other legislative procurement unit that is a committee, subcommittee, commission, or other organization, the chair or, if there is more than one chair, the chairs of the committee, subcommittee, commission, or other organization.

(2) The protest officer of all legislative procurement units is an individual designated by legislative general counsel.

**Section H-104. Legislative Management Committee approval required.**

A legislative procurement unit described in Subsection H-103(1)(g) may not issue a solicitation for the acquisition of a procurement item or enter into a contract to acquire a procurement item without the approval of the chairs of the Legislative Management Committee.

**Section H-105. Legislative procurement unit acts through the procurement official -- Delegation of authority.**

(1) Except as otherwise explicitly provided in statute or this policy, for procurement purposes a legislative procurement unit acts through the procurement official of the legislative procurement unit.

(2)(a) A procurement official may in writing delegate some or all of the procurement official's duties and authority to one or more employees of the procurement unit, as the procurement official considers appropriate.

(b) A delegation under Subsection (2)(a) remains in effect until modified or revoked in writing.

**Section H-106. Options for dealing with single solicitation response.**

A legislative procurement unit that receives a single solicitation response in response to a solicitation may:

(1) award a contract to the vendor that submitted the single solicitation response if the procurement official determines that:

(a) the legislative procurement unit's actions relating to the issuance and notice of the solicitation complied with statute and this policy;

(b) the solicitation response meets the minimum requirements of the solicitation;

(c) other vendors had a fair opportunity to submit a solicitation response;

(d) the terms of the single solicitation response, including pricing, are fair and reasonable; and

(e) awarding the contract to the vendor that submitted the single solicitation response is in the best interest of the legislative procurement unit;

(2)(a) revise the solicitation as the procurement official considers appropriate, including to extend the deadline for submitting a solicitation response; and

(b) reissue and provide notice of the revised solicitation, allowing vendors, including the vendor that submitted the single solicitation response, to submit a solicitation response to the revised solicitation; or

(3) abandon the procurement.

**Section H-107. Solicitation response from a person who is suspended, debarred, or ineligible.**

A legislative procurement unit may not accept or evaluate a solicitation response from a person who is suspended, debarred, or otherwise ineligible to submit a solicitation response at the time that the solicitation response is due.

**Section H-108. Claim of business confidentiality.**

(1)(a) A person who submits a solicitation response that contains information that the person claims should be protected under Subsection 63G-2-305(1) or (2) shall:

(i) comply with the requirements of Section 63G-2-309; and

(ii)(A) submit a version of the solicitation response that is without redaction, marked "Contains Protected Confidential Business Information"; and

(B) submit a version of the solicitation response clearly marked as a "Redacted Version," with all information claimed to be protected under Subsection 63G-2-305(1) or (2) redacted.

(b) An evaluation committee may use the version of the solicitation response that is unredacted for evaluation purposes.

(c) The redacted version of the solicitation response is the version of the solicitation response that is for eventual public release.

(d) Both versions of a solicitation response submitted under this section are subject to the provisions of Title 63G, Chapter 2, Government Records Access and Management Act, and the Utah Legislature Policies and Procedures for Handling Records Requests.

(2) A legislative procurement unit may consider a solicitation response to be not responsive if the the vendor claims that all or substantially all of the material provisions of the solicitation response should be protected under Subsection 63G-2-305(1) or (2).

**Section H-109. Exceptions to the terms and conditions in a solicitation.**

(1) As used in this section, "exception request" means a request by a vendor for an exception or change to one or more of the terms or conditions of a solicitation.

(2) Subject to any exception or change granted under this section, by submitting a solicitation response a vendor:

(a) acknowledges that the terms and conditions, scope of work, and process described in the solicitation are fair, equitable, and not unduly restrictive; and

(b) certifies that the vendor understands and agrees to the terms and conditions, scope of work, and process described in the solicitation.

(3)(a) A vendor seeking an exception or change to any of the terms or conditions contained in a solicitation shall include an exception request in the vendor's solicitation response.

(b) An exception request:

(i) shall clearly identify each term or condition as to which the vendor requests an exception or change;

(ii) shall clearly explain each requested exception or change; and

(iii) may not incorporate information by reference to a source external to the solicitation response.

(4) The procurement official may decline to negotiate an exception request or reject an exception request if the procurement official determines that:

(a) what is requested in the exception request is excessive;

(b) granting the exception request would result in a contract that is inconsistent with other similar contracts of the legislative procurement unit;

(c) the exception or change would impair a warranty, insurance, indemnification provision, or other protection that the procurement official determines to be necessary to protect the legislative procurement unit;

(d) the solicitation specifically prohibits the requested exception or change; or

(e) the requested exception or change is not in the best interest of the legislative procurement unit.

**Section H-110. Procurement without engaging in a standard procurement process.**

(1) As provided in Utah Code Section 63G-6a-802(1)(c), a legislative procurement unit may award a contract for a procurement item without engaging in a standard procurement process if:

(a)(i)(A) the legislative procurement unit currently purchases a procurement item from a vendor under an existing contract with that vendor; and

(B) the procurement item is a continuation or an upgrade of a service regarding which the vendor has specific or unique knowledge or experience, or the vendor has customized the procurement item for the particular needs of the legislative procurement unit; or

(ii) the procurement is under other circumstances that the procurement official determines in writing make using a standard procurement process impractical and not in the best interest of the legislative procurement unit;

(b) the legislative procurement unit is able to negotiate for the purchase of the procurement item on terms that are favorable to the legislative procurement unit; and

(c) in the procurement official's judgment, engaging in a standard procurement process for an award of a contract for the procurement item would not likely result in a contract with materially better terms for the legislative procurement unit.

(2) A legislative procurement unit may, without engaging in a standard procurement process, obtain a procurement item under:

(a) a state cooperative contract; or

(b) any other contract that the Division of Purchasing and General Services makes available to public entities for the purchase of procurement items.

#### **Section H-111. Retention of written determinations.**

With respect to any written determination required or allowed under this policy, the procurement official shall retain the written determination in the legislative procurement unit's file relating to the contract.

#### **Section H-112. Limit on notice publication requirement.**

A legislative procurement unit is not required to publish notice of:

(1) a procurement under Section H-110, H-501, or H-502; or

(2) a sole source procurement.

#### **Section H-113. Mixed procurement items.**

(1) For purposes of applying the provisions of this policy, a procurement official may determine whether a mixed procurement item is to be treated as a standard procurement item or as a professional service procurement item.

- (2) A procurement official shall make a determination under Subsection (1) based on:
  - (a) the nature of the procurement item; and
  - (b) whether it is in the legislative procurement unit's best interest to treat the procurement item as a standard procurement item or as a professional service procurement item.
- (3) A procurement official's determination under Subsection (1) is conclusive and final.

## **Part 2. Bidding Process**

### **Section H-201. Resolving a tie bid.**

- (1) This section applies in a bidding process if:
  - (a) a tie bid occurs pursuant to an invitation for bids; and
  - (b) the legislative procurement unit intends to move forward with awarding a contract to a responsible bidder.
- (2) The procurement official of the legislative procurement unit that issued the invitation for bids shall award the contract to the tie bidder who is a Utah resident, if:
  - (a) there is only one tie bidder that is a Utah resident; and
  - (b) the tie bidder indicated in the bidder's bid that the bidder is a Utah resident.
- (3) If Subsection (2) does not apply, the procurement official may:
  - (a) award the contract to the tie bidder whose bid the procurement official determines will likely have the greatest beneficial economic impact on the state; or
  - (b) resolve the tie bid by tossing a coin or using any other method of randomly selecting one of the tie bidders.

## **Part 3. Request for Proposals Process**

### **Section H-301. Application to request for proposals process.**

This part applies to a legislative procurement unit's use of the request for proposals process.



**Section H-302. Initial review of proposals for compliance with technical requirements.**

(1) A procurement official may:

(a) designate an individual or individuals to conduct an initial review of a proposal to determine whether the proposal is timely and responsive and whether the vendor is responsible; and

(b) authorize the individual or individuals to reject a proposal if:

(i) the proposal is not timely or responsive; or

(ii) from an objective standpoint, it is not reasonable to conclude that the vendor is responsible.

(2) A failure to reject a proposal under Subsection (1) does not affect the ability of an evaluation committee or legislative procurement unit to reject a proposal on a basis stated in Subsection (1)(b) or any other appropriate basis.

**Section H-303. Evaluation committee process.**

(1) At any time before or after the issuance of a solicitation, a procurement official may appoint an evaluation committee to evaluate proposals submitted in response to a solicitation.

(2)(a) Subject to Subsection (2)(b), an evaluation committee may evaluate proposals according to any process the evaluation committee considers to be reasonably calculated to allow a thorough, fair, and unbiased evaluation of the proposals by all committee members, including:

(i) a separate evaluation of proposals by individual evaluation committee members, followed by a combined evaluation by all committee members together; or

(ii) a group evaluation of proposals by all evaluation committee members together.

(b) Any discussion by members of an evaluation committee regarding the committee's evaluation of proposals shall be conducted in a manner that allows each member to hear all of the discussion from all other members.

(3)(a) Subject to Subsection (3)(b), an evaluation committee shall evaluate a proposal based on:

(i) the proposal;

(ii) information provided as part of the evaluation process by the vendor who submitted the proposal;

(iii) information the evaluation committee obtains from interviews of references provided by the vendor; and

(iv) any other information generally available to the public at large.

(b) Subsection (3)(a) does not prevent an evaluation committee from using a committee member's personal knowledge about or experience with one or more vendors who have submitted proposals if that knowledge or experience does not impair the committee member's ability to exercise independent and impartial judgment in evaluating proposals.

(4)(a) An evaluation committee may interview or cause interviews to be conducted with references provided by vendors.

(b) The evaluation committee shall ensure that interviews are conducted and information from interviews compiled in as uniform and fair a manner as practicable.

(5)(a) An evaluation committee member who does not attend an evaluation committee meeting at which the committee evaluates proposals is removed from the evaluation committee and may not participate in the evaluation of proposals.

(b) Attendance at an evaluation committee meeting may be in person or by electronic means.

(6) An evaluation committee member who feels that the member's independence or impartiality has been compromised shall recuse himself or herself from the evaluation committee.

(7) An evaluation committee member is not disqualified from serving on an evaluation committee because of:

(a) the member's previous experience or history with a vendor whose proposal is being evaluated, unless the member or the evaluation committee concludes that the member's previous experience or history with the vendor impairs the member's ability to exercise independent and impartial judgment in evaluating proposals; or

(b) a bias that the evaluation committee develops during the evaluation process because of the quality of a vendor's qualifications, the quality of a proposal, information obtained during the evaluation process, or how well a proposal meets criteria in the solicitation.

(8) A procurement official may remove an evaluation committee member from an evaluation committee at any time.

(9)(a) In conducting an evaluation of proposals, an evaluation committee shall arrive at a consensus score for each proposal.

(b) An evaluation committee may calculate a consensus score by:

(i) combining the total of all points given to a proposal by individual committee members;

(ii) calculating an average of all the scores given to a proposal by all committee members; or

(iii) using any other method the evaluation committee determines to be a fair and accurate way to arrive at a score that reflects the consensus scoring for each proposal.

(c) An evaluation committee shall use the same method of calculating a consensus score for each of the proposals being evaluated.

(10) An evaluation committee member may change the member's initial scoring during evaluation committee discussions relating to the evaluation of proposals based on the evaluation committee member's further evaluation of proposals in light of the evaluation committee discussion and any other information that becomes available during and as part of the evaluation process.

(11) An evaluation committee shall reject a proposal if the evaluation committee determines that:

(a) the proposal is not responsive; or

(b) the proposal is submitted by a person who is not responsible.

#### **Part 4. Approved Vendor List Process**

##### **Section H-401. Method of selecting vendors from an approved vendor list.**

A legislative procurement unit that uses the approved vendor list process to select a vendor for an award of a contract shall select a vendor from the approved vendor list by a random selection method or any other method that ensures that all vendors on the approved vendor list have a fair and equitable opportunity to be awarded contracts.

## Part 5. Small Purchases

### Section H-501. Small purchase using any method.

A legislative procurement unit may make a procurement by following any method the procurement official considers to be adequate and reasonable if the procurement:

(1)(a) is of one or more standard procurement items, no one of which costs more than \$7,500; and

(b) does not cause the procurement unit to exceed a threshold under Section H-503;

or

(2) is of a professional service procurement item costing no more than \$50,000 per year.

### Section H-502. Small purchase using competitive quotes.

(1) A legislative procurement unit may make a procurement by following the method described in Subsection (2) if the procurement:

(a)(i) is of one or more standard procurement items, no one of which costs more than \$50,000; and

(ii) does not cause the procurement unit to exceed a threshold under Section H-503;

or

(b) is of a professional service procurement item costing no more than \$100,000 per year.

(2)(a) For a procurement described in Subsection (1), a legislative procurement unit shall:

(i) obtain at least two competitive quotes from vendors of the procurement item or items; and

(ii) subject to Subsection (2)(b), accept the lowest acceptable quote and purchase the procurement item or items from the responsible vendor giving the lowest acceptable quote.

(b) Subsection (2)(a)(ii) does not prohibit a legislative procurement unit from:

(i) accepting a quote other than the lowest quote and purchasing the procurement item or items from the responsible vendor giving a quote other than the lowest quote if the procurement official determines that factors other than cost are important to consider in making the selection that is most advantageous to the legislative procurement unit;

- (ii) rejecting all quotes and abandoning the procurement; or
- (iii) repeating the process under Subsection (2)(a) with quotes from different vendors.

**Section H-503. Small purchase thresholds.**

With respect to a legislative procurement unit's procurement of standard procurement items under this part:

- (1) the single procurement aggregate threshold is:
  - (a) \$50,000 for a procurement under Section H-501; and
  - (b) \$150,000 for a procurement under Section H-502; and
- (2) the annual cumulative threshold is \$200,000.

**Section H-504. Exceeding a limit or threshold.**

(1) Notwithstanding any other provision of this part, a legislative procurement unit may exceed a limit under Subsection H-501(1)(a) or H-502(1)(a)(i), the single procurement aggregate threshold, or the annual cumulative threshold if the procurement official:

- (a) concludes that exceeding the limit or threshold is in the best interest of the legislative procurement unit; and
- (b) provides a written authorization to exceed the limit or threshold.

(2) A written authorization under Subsection (1) shall state the reasons for exceeding the limit or threshold, including an explanation of why exceeding the limit or threshold is in the best interest of the legislative procurement unit.

**Part 6. Sole Source Procurement**

**Section H-601. Contesting a sole source procurement.**

(1) This section applies to a sole source procurement for which a legislative procurement unit has elected to publish notice as provided in Section 63G-6a-112.

(2) As provided in Subsection (3), a person who claims to be another viable source for a procurement item over \$50,000 that a legislative procurement unit proposes to purchase through a sole source procurement process may contest the sole source procurement on the basis that the vendor with which the legislative procurement unit proposes to enter into a

contract for the purchase of the procurement item is not the sole source for the procurement item.

(3) A person submitting a contest under Subsection (2) shall submit the contest in writing:

(a) within 15 calendar days after the first day of the publication of notice under Section 63G-6a-112; and

(b) to the procurement official of the legislative procurement unit.

(4) A contest under this section shall:

(a) contain the name, business address, business telephone number, and email address of the person submitting the contest;

(b) contain a detailed explanation of the basis for the contest; and

(c) be accompanied by any documentation on which the person relies to show that the person is another viable source for the procurement item.

(5)(a) Within 20 calendar days after receiving a timely contest under this section, the procurement official shall make a determination in writing on the contest and send a copy of the determination to the person who submitted the contest.

(b) A legislative procurement unit may not continue a sole source procurement process that is the subject of a timely contest under this section unless the procurement official determines that the contest is without merit.

(6) A person who fails to contest a sole source procurement as provided in this section is barred from challenging the sole source procurement.

## **Part 7. Contracts**

**Section H-701. Contract award subject to successful negotiation of contract terms.**

(1) A legislative procurement unit's award of a contract pursuant to a solicitation is subject to the successful negotiation of contract terms that are:

(a) consistent with:

(i) the solicitation; and

(ii) the legislative procurement unit's standard terms and conditions, except to the extent an exception is approved under Section H-109; and

(b) acceptable to the legislative procurement unit as being in the best interest of the legislative procurement unit.

(2) If a legislative procurement unit and the vendor that is awarded a contract pursuant to a solicitation are unable to agree to contract terms within a reasonable period of time, as determined by the procurement official, the legislative procurement unit may:

(a)(i) vacate the award of a contract to that vendor; and

(ii) award the contract to the responsible vendor with the next-highest scoring solicitation response;

(b)(i) reissue the solicitation and repeat the procurement process; or

(ii) issue a new solicitation and begin a new procurement process; or

(c) cancel or postpone the procurement.

### **Section H-702. Technology Modifications.**

A contract may be modified to accommodate new technology if:

(1) the solicitation that resulted in the contract contains a provision indicating that the contract would be subject to modification to accommodate new technology;

(2) the contract contains a provision indicating the contract is subject to modification to accommodate new technology; and

(3) the modification is substantially within the scope of the original solicitation and contract.

### **Section H-703. Electronic signatures on contracts.**

(1) A legislative procurement unit or vendor signature on a contract awarded by a legislative procurement unit may be an electronic signature if the electronic signature is:

(a) unique to and under the sole control of the individual signing the contract; and

(b) created using a mechanism that:

(i) verifies the origin of the electronic signature; and

(ii) links the data in the contract to the electronic signature in a manner that invalidates the electronic signature if any of the data is changed.

(2) A legislative procurement unit may determine the manner of affixing an electronic signature to a contract, including which software or format is acceptable to the legislative procurement unit to ensure that an electronic signature meets the criteria of Subsection (1).