

**PROCUREMENT CODE REVISIONS**

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Karen Mayne**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies the Utah Procurement Code relating to work site safety programs.

**Highlighted Provisions:**

This bill:

▶ includes information about a work site safety program in information that a person submitting a statement of qualification may be required to provide; and

▶ includes the presence and quality of work site safety programs among the criteria that may be used to evaluate a bid.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**63G-6a-403**, as last amended by Laws of Utah 2014, Chapter 196

**63G-6a-606**, as last amended by Laws of Utah 2014, Chapter 196

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

Section 1. Section **63G-6a-403** is amended to read:

**63G-6a-403. Prequalification of potential vendors.**



28 (1) As used in this section:

29 (a) "Closed-ended prequalification process" means a process to prequalify potential  
30 vendors under this section that is characterized by:

31 (i) a short, specified period of time during which potential vendors may be  
32 prequalified; and

33 (ii) a specified date at which prequalifications expire.

34 (b) "Open-ended prequalification process" means a process to prequalify vendors and  
35 potential vendors under this section that is characterized by an indeterminate period of time  
36 during any part of which vendors or potential vendors may be prequalified and the  
37 prequalification of previously prequalified vendors or potential vendors may be periodically  
38 renewed.

39 (c) "Vendor" means:

40 (i) a bidder;

41 (ii) an offeror; or

42 (iii) a contractor, including an architect or an engineer.

43 (2) A procurement unit may, in accordance with this section:

44 (a) using a closed-ended prequalification process or an open-ended prequalification  
45 process:

46 (i) prequalify potential vendors to provide any procurement item or type of  
47 procurement item specified by the procurement unit; or

48 (ii) rank architects, engineers, or other professional service providers to begin the fee  
49 negotiation process, as provided in this chapter; and

50 (b) limit participation in a standard procurement process to the prequalified potential  
51 vendors for the specified procurement item or type of procurement item.

52 (3) To prequalify potential vendors or rank professional service providers, a  
53 procurement unit shall issue a request for statement of qualifications.

54 (4) A procurement unit that issues a request for statement of qualifications:

55 (a) shall:

56 (i) publish the request for statement of qualifications in accordance with the  
57 requirements of Section [63G-6a-406](#); and

58 (ii) state in the request for statement of qualifications:

- 59 (A) the procurement item or type of procurement item to which the request for  
60 statement of qualifications relates;
- 61 (B) the scope of work to be performed;
- 62 (C) the instructions and deadline for submitting a statement of qualifications;
- 63 (D) the criteria by which the procurement unit will evaluate statements of  
64 qualifications;
- 65 (E) whether the prequalification process is a closed-ended prequalification process or  
66 an open-ended prequalification process;
- 67 (F) if the prequalification process is a closed-ended prequalification process, the period  
68 of time during which the list of prequalified potential vendors will remain in effect, which may  
69 not be longer than 18 months after the list of prequalified potential vendors is made available to  
70 the public under Subsection (11)(b);
- 71 (G) if the prequalification process is an open-ended prequalification process, when a  
72 potential vendor may submit a statement of qualifications for the potential vendor to be  
73 considered for inclusion on the list of prequalified potential vendors; and
- 74 (H) that a procurement unit may limit participation in an invitation for bids or a request  
75 for proposals to the potential vendors that are prequalified to provide the specified procurement  
76 item or type of procurement item; and
- 77 (b) may request the person submitting a statement of qualifications to provide:
- 78 (i) basic information about the person;
- 79 (ii) the person's experience and work history;
- 80 (iii) information about the person's management and staff;
- 81 (iv) information about the person's licenses, certifications, and other qualifications;
- 82 (v) any applicable performance ratings;
- 83 (vi) financial statements reporting the person's financial condition; ~~and~~
- 84 (vii) information about the person's work site safety program, including any  
85 requirement that the person imposes on subcontractors for a work site safety program; and  
86 ~~(vii)] (viii) any other pertinent information.~~
- 87 (5) (a) In order to renew a prequalification, a vendor or potential vendor that has been  
88 previously prequalified through an open-ended prequalification process shall submit a  
89 statement of qualifications no more than 18 months after the previous prequalification of that

90 vendor or potential vendor.

91 (b) A previously prequalified vendor or potential vendor submitting a statement of  
92 qualifications under Subsection (5)(a) shall comply with all requirements applicable at that  
93 time to a potential vendor seeking prequalification for the first time.

94 (6) A procurement unit may at any time modify prequalification requirements of an  
95 open-ended prequalification process.

96 (7) The criteria described in Subsection (4)(a)(ii)(D):

97 (a) shall include the prequalification requirements unique to the procurement;

98 (b) may include performance rating criteria; and

99 (c) may not be so restrictive that the criteria unreasonably limit competition.

100 (8) A procurement unit may, before making a final list of prequalified vendors, request  
101 additional information to clarify responses made to the request for statement of qualifications.

102 (9) A potential vendor shall be included on the list of prequalified potential vendors if  
103 the potential vendor:

104 (a) submits a timely, responsive response to the request for statement of qualifications;  
105 and

106 (b) meets the criteria for qualification described in Subsection (4)(a)(ii)(D).

107 (10) If a request for statement of qualifications will result in only one potential vendor  
108 being placed on the list of prequalified potential vendors:

109 (a) the procurement unit shall cancel the request for statement of qualifications; and

110 (b) the list may not be used by the procurement unit.

111 (11) The procurement unit shall:

112 (a) before making the list of prequalified potential vendors available to the public,  
113 provide each potential vendor who provided information in response to the request, but who  
114 did not meet the minimum qualifications for placement on the list, a written justification  
115 statement describing why the potential vendor did not meet the criteria for inclusion on the list;  
116 and

117 (b) make the list of prequalified potential vendors available to the public within 30  
118 days after:

119 (i) completing the evaluation process, if the prequalification process is a closed-ended  
120 prequalification process; or

121 (ii) updating the list of prequalified potential vendors, if the prequalification process is  
122 an open-ended prequalification process.

123 Section 2. Section **63G-6a-606** is amended to read:

124 **63G-6a-606. Evaluation of bids -- Award -- Cancellation -- Disqualification.**

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

- 128 (a) experience;
- 129 (b) performance ratings;
- 130 (c) inspection;
- 131 (d) testing;
- 132 (e) quality;
- 133 (f) workmanship;
- 134 (g) time and manner of delivery;
- 135 (h) references;
- 136 (i) financial stability;
- 137 (j) cost;
- 138 (k) suitability for a particular purpose; [~~or~~]

139 (l) the presence and quality of a work site safety program, including any requirement  
140 that the contractor imposes on subcontractors for a work site safety program; or

141 [~~(h)~~] (m) other objective criteria specified in the invitation for bids.

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

143 (3) The conducting procurement unit shall:

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

145 (i) the lowest responsive and responsible bidder who meets the objective criteria  
146 described in the invitation for bids; or

147 (ii) if, in accordance with Subsection (4), the procurement officer or the head of the  
148 conducting procurement unit disqualifies the bidder described in Subsection (3)(a)(i), the next  
149 lowest responsive and responsible bidder who meets the objective criteria described in the  
150 invitation for bids; or

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

- 152           (4) In accordance with Subsection (5), the procurement officer or the head of the  
153 conducting procurement unit may disqualify a bidder for:
- 154           (a) a violation of this chapter;
  - 155           (b) a violation of a requirement of the invitation for bids;
  - 156           (c) unlawful or unethical conduct; or
  - 157           (d) a change in circumstance that, had the change been known at the time the bid was  
158 submitted, would have caused the bidder to not be the lowest responsive and responsible bidder  
159 who meets the objective criteria described in the invitation for bids.
- 160           (5) A procurement officer or head of a conducting procurement unit who disqualifies a  
161 bidder under Subsection (4) shall:
- 162           (a) make a written finding, stating the reasons for disqualification; and
  - 163           (b) provide a copy of the written finding to the disqualified bidder.
- 164           (6) If a conducting procurement unit cancels an invitation for bids without awarding a  
165 contract, the conducting procurement unit shall make available for public inspection a written  
166 justification for the cancellation.

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**Legislative Review Note**  
**as of 1-29-15 10:36 AM**

**Office of Legislative Research and General Counsel**