

Senator Karen Mayne proposes the following substitute bill:

PROCUREMENT CODE REVISIONS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: Mike K. McKell

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 a work site safety program among the criteria that may be used to evaluate a bid or proposal.

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

63G-6a-707, as last amended by Laws of Utah 2014, Chapter 196



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

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

28 **63G-6a-403. Prequalification of potential vendors.**

29 (1) As used in this section:

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

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

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

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

40 (c) "Vendor" means:

41 (i) a bidder;

42 (ii) an offeror; or

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

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

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

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

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

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

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

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

56 (a) shall:

- 57 (i) publish the request for statement of qualifications in accordance with the
58 requirements of Section 63G-6a-406; and
- 59 (ii) state in the request for statement of qualifications:
- 60 (A) the procurement item or type of procurement item to which the request for
61 statement of qualifications relates;
- 62 (B) the scope of work to be performed;
- 63 (C) the instructions and deadline for submitting a statement of qualifications;
- 64 (D) the criteria by which the procurement unit will evaluate statements of
65 qualifications;
- 66 (E) whether the prequalification process is a closed-ended prequalification process or
67 an open-ended prequalification process;
- 68 (F) if the prequalification process is a closed-ended prequalification process, the period
69 of time during which the list of prequalified potential vendors will remain in effect, which may
70 not be longer than 18 months after the list of prequalified potential vendors is made available to
71 the public under Subsection (11)(b);
- 72 (G) if the prequalification process is an open-ended prequalification process, when a
73 potential vendor may submit a statement of qualifications for the potential vendor to be
74 considered for inclusion on the list of prequalified potential vendors; and
- 75 (H) that a procurement unit may limit participation in an invitation for bids or a request
76 for proposals to the potential vendors that are prequalified to provide the specified procurement
77 item or type of procurement item; and
- 78 (b) may request the person submitting a statement of qualifications to provide:
- 79 (i) basic information about the person;
- 80 (ii) the person's experience and work history;
- 81 (iii) information about the person's management and staff;
- 82 (iv) information about the person's licenses, certifications, and other qualifications;
- 83 (v) any applicable performance ratings;
- 84 (vi) financial statements reporting the person's financial condition; ~~and~~
- 85 (vii) information about the person's work site safety program, including any
86 requirement that the person imposes on subcontractors for a work site safety program; and
87 ~~(vii)~~ (viii) any other pertinent information.

88 (5) (a) In order to renew a prequalification, a vendor or potential vendor that has been
89 previously prequalified through an open-ended prequalification process shall submit a
90 statement of qualifications no more than 18 months after the previous prequalification of that
91 vendor or potential vendor.

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

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

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

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

99 (b) may include performance rating criteria; and

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

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

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

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

106 and

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

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

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

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

112 (11) The procurement unit shall:

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

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

119 days after:

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

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

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

125 **63G-6a-606. Evaluation of bids -- Award -- Cancellation -- Disqualification.**

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

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

140 (l) the contractor's work site safety program, including any requirement that the
141 contractor imposes on subcontractors for a work site safety program; or

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

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

144 (3) The conducting procurement unit shall:

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

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

148 (ii) if, in accordance with Subsection (4), the procurement officer or the head of the
149 conducting procurement unit disqualifies the bidder described in Subsection (3)(a)(i), the next

150 lowest responsive and responsible bidder who meets the objective criteria described in the
151 invitation for bids; or

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

153 (4) In accordance with Subsection (5), the procurement officer or the head of the
154 conducting procurement unit may disqualify a bidder for:

155 (a) a violation of this chapter;

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

157 (c) unlawful or unethical conduct; or

158 (d) a change in circumstance that, had the change been known at the time the bid was
159 submitted, would have caused the bidder to not be the lowest responsive and responsible bidder
160 who meets the objective criteria described in the invitation for bids.

161 (5) A procurement officer or head of a conducting procurement unit who disqualifies a
162 bidder under Subsection (4) shall:

163 (a) make a written finding, stating the reasons for disqualification; and

164 (b) provide a copy of the written finding to the disqualified bidder.

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

168 Section 3. Section **63G-6a-707** is amended to read:

169 **63G-6a-707. Evaluation of proposals -- Evaluation committee.**

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

174 (a) experience;

175 (b) performance ratings;

176 (c) inspection;

177 (d) testing;

178 (e) quality;

179 (f) workmanship;

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

- 181 (h) references;
- 182 (i) financial solvency;
- 183 (j) suitability for a particular purpose;
- 184 (k) management plans;
- 185 (l) the presence and quality of a work site safety program, including any requirement
- 186 that the offeror imposes on subcontractors for a work site safety program;
- 187 ~~(h)~~ (m) cost; or
- 188 ~~(m)~~ (n) other subjective or objective criteria specified in the request for proposals.
- 189 (2) Criteria not described in the request for proposals may not be used to evaluate a
- 190 proposal.
- 191 (3) The conducting procurement unit shall:
- 192 (a) appoint an evaluation committee consisting of at least three individuals; and
- 193 (b) ensure that the evaluation committee and each member of the evaluation
- 194 committee:
- 195 (i) does not have a conflict of interest with any of the offerors;
- 196 (ii) can fairly evaluate each proposal;
- 197 (iii) does not contact or communicate with an offeror concerning the procurement
- 198 outside the official evaluation committee process; and
- 199 (iv) conducts the evaluation in a manner that ensures a fair and competitive process
- 200 and avoids the appearance of impropriety.
- 201 (4) The evaluation committee may, with the approval of the head of the conducting
- 202 procurement unit, enter into discussions or conduct interviews with, or attend presentations by,
- 203 the offerors.
- 204 (5) (a) Except as provided in Subsections (5)(b) and (8), each member of the evaluation
- 205 committee is prohibited from knowing, or having access to, any information relating to the
- 206 cost, or the scoring of the cost, of a proposal until after the evaluation committee submits its
- 207 final recommended scores on all other criteria to the issuing procurement unit.
- 208 (b) The issuing procurement unit shall:
- 209 (i) if applicable, assign an individual who is not a member of the evaluation committee
- 210 to calculate scores for cost based on the applicable scoring formula, weighting, and other
- 211 scoring procedures contained in the request for proposals;

- 212 (ii) review the evaluation committee's scores and correct any errors, scoring
213 inconsistencies, and reported noncompliance with this chapter;
- 214 (iii) add the scores calculated for cost, if applicable, to the evaluation committee's final
215 recommended scores on criteria other than cost to derive the total combined score for each
216 responsive and responsible proposal; and
- 217 (iv) provide to the evaluation committee the total combined score calculated for each
218 responsive and responsible proposal, including any applicable cost formula, weighting, and
219 scoring procedures used to calculate the total combined scores.
- 220 (c) The evaluation committee may not:
- 221 (i) change its final recommended scores described in Subsection (5)(a) after the
222 evaluation committee has submitted those scores to the issuing procurement unit; or
- 223 (ii) change cost scores calculated by the issuing procurement unit.
- 224 (6) (a) As used in this Subsection (6), "management fee" includes only the following
225 fees of the construction manager/general contractor:
- 226 (i) preconstruction phase services;
- 227 (ii) monthly supervision fees for the construction phase; and
- 228 (iii) overhead and profit for the construction phase.
- 229 (b) When selecting a construction manager/general contractor for a construction
230 project, the evaluation committee:
- 231 (i) may score a construction manager/general contractor based upon criteria contained
232 in the solicitation, including qualifications, performance ratings, references, management plan,
233 certifications, and other project specific criteria described in the solicitation;
- 234 (ii) may, as described in the solicitation, weight and score the management fee as a
235 fixed rate or as a fixed percentage of the estimated contract value;
- 236 (iii) may, at any time after the opening of the responses to the request for proposals,
237 have access to, and consider, the management fee proposed by the offerors; and
- 238 (iv) except as provided in Subsection (7), may not know or have access to any other
239 information relating to the cost of construction submitted by the offerors, until after the
240 evaluation committee submits its final recommended scores on all other criteria to the issuing
241 procurement unit.
- 242 (7) (a) The deliberations of an evaluation committee may be held in private.

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

246 (8) An issuing procurement unit is not required to comply with Subsection (5) if the
247 head of the issuing procurement unit or a person designated by rule made by the applicable
248 rulemaking authority:

249 (a) signs a written statement:

250 (i) indicating that, due to the nature of the proposal or other circumstances, it is in the
251 best interest of the procurement unit to waive compliance with Subsection (5); and

252 (ii) describing the nature of the proposal and the other circumstances relied upon to
253 waive compliance with Subsection (5); and

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