

PROCUREMENT PROCESS AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: Michael E. Noel

LONG TITLE

General Description:

This bill modifies provisions relating to the procurement process.

Highlighted Provisions:

This bill:

- requires a request for proposals for a construction project to require offerors to include in a proposal the offeror's safety plan for the company and for the specific site; and

- requires the evaluation criteria of a request for proposals for a construction project to include the existence and quality of an offeror's safety plan for the company and for the specific site.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-6a-703, as last amended by Laws of Utah 2016, Chapter 355

63G-6a-707, as last amended by Laws of Utah 2016, Chapters 237 and 355

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

Section 1. Section **63G-6a-703** is amended to read:

29 **63G-6a-703. Request for proposals -- Requirements -- Publication of request.**

30 (1) The request for proposals standard procurement process begins when the division
31 or a procurement unit with independent procurement authority issues a request for proposals.

32 (2) A request for proposals shall:

33 (a) state the period of time during which a proposal will be accepted;

34 (b) describe the manner in which a proposal shall be submitted;

35 (c) state the place where a proposal shall be submitted;

36 (d) include, or incorporate by reference:

37 (i) a description of the procurement items sought;

38 (ii) a description of the subjective and objective criteria that will be used to evaluate
39 the proposal; and

40 (iii) the standard contractual terms and conditions required by the authorized
41 purchasing entity;

42 (e) if the request for proposals is for a construction project, require each offeror to
43 include in a proposal a description of the offeror's company safety plan and the offeror's safety
44 plan for the specific project that is the subject of the proposal;

45 ~~(f)~~ (f) state the relative weight that will be given to each score for the criteria
46 described in Subsection (2)(d)(ii), including cost;

47 ~~(g)~~ (g) state the formula that will be used to determine the score awarded for the cost
48 of each proposal;

49 ~~(h)~~ (h) if the request for proposals will be conducted in multiple stages, as described
50 in Section 63G-6a-710, include a description of the stages and the criteria and scoring that will
51 be used to screen offerors at each stage; and

52 ~~(i)~~ (i) state that best and final offers may be allowed, as provided in Section
53 63G-6a-707.5, from responsible offerors who submit responsive proposals that meet minimum
54 qualifications, evaluation criteria, or applicable score thresholds identified in the request for
55 proposals.

56 (3) The division or a procurement unit with independent procurement authority shall
 57 publish a request for proposals in accordance with the requirements of Section 63G-6a-112.

58 Section 2. Section **63G-6a-707** is amended to read:

59 **63G-6a-707. Evaluation of proposals -- Evaluation committee.**

60 (1) (a) To determine which proposal provides the best value to the procurement unit,
 61 the evaluation committee shall evaluate each [~~responsive and responsible~~] responsible offeror's
 62 responsive proposal that has not been disqualified from consideration under the provisions of
 63 this chapter, using the criteria described in the request for proposals[~~, which~~].

64 (b) The criteria in a request for proposals may include:

- 65 [~~(a)~~] (i) experience;
- 66 [~~(b)~~] (ii) performance ratings;
- 67 [~~(c)~~] (iii) inspection;
- 68 [~~(d)~~] (iv) testing;
- 69 [~~(e)~~] (v) quality;
- 70 [~~(f)~~] (vi) workmanship;
- 71 [~~(g)~~] (vii) time, manner, or schedule of delivery;
- 72 [~~(h)~~] (viii) references;
- 73 [~~(i)~~] (ix) financial solvency;
- 74 [~~(j)~~] (x) suitability for a particular purpose;
- 75 [~~(k)~~] (xi) management plans;
- 76 [~~(l) the presence and quality of a work site safety program, including any requirement~~
 77 ~~that the offeror imposes on subcontractors for a work site safety program;~~]
- 78 [~~(m)~~] (xii) cost; or
- 79 [~~(n)~~] (xiii) other subjective or objective criteria specified in the request for proposals.

80 (c) The criteria in a request for proposals for a construction project shall include the
 81 existence and quality of:

- 82 (i) an offeror's company safety plan; and

83 (ii) the offeror's safety plan for the specific project that is the subject of the proposal.

84 (2) Criteria not described in the request for proposals may not be used to evaluate a
85 proposal.

86 (3) (a) For a procurement of administrative law judge service, an evaluation committee
87 shall consist of:

88 (i) the head of the conducting procurement unit, or the head's designee;

89 (ii) the head of an executive branch procurement unit other than the conducting
90 procurement unit, appointed by the executive director of the Department of Human Resource
91 Management, or the head's designee; and

92 (iii) the executive director of the Department of Human Resource Management, or the
93 executive director's designee.

94 (b) For every other procurement requiring an evaluation by an evaluation committee,
95 the conducting procurement unit shall:

96 (i) appoint an evaluation committee consisting of at least three individuals with at least
97 a general familiarity with or basic understanding of:

98 (A) the technical requirements relating to the type of procurement item that is the
99 subject of the procurement; or

100 (B) the need that the procurement item is intended to address; and

101 (ii) ensure that the evaluation committee and each individual participating in the
102 evaluation committee process:

103 (A) does not have a conflict of interest with any of the offerors;

104 (B) can fairly evaluate each proposal;

105 (C) does not contact or communicate with an offeror concerning the procurement
106 outside the official evaluation committee process; and

107 (D) conducts or participates in the evaluation in a manner that ensures a fair and
108 competitive process and avoids the appearance of impropriety.

109 (4) A conducting procurement unit may authorize an evaluation committee to receive

110 assistance:

111 (a) from an expert or consultant who:

112 (i) is not a member of the evaluation committee; and

113 (ii) does not participate in the evaluation scoring; and

114 (b) to better understand a technical issue involved in the procurement.

115 (5) (a) An evaluation committee may, with the approval of the head of the conducting
116 procurement unit, enter into discussions or conduct interviews with, or attend presentations by,
117 the offerors, for the purpose of clarifying information contained in proposals.

118 (b) In a discussion, interview, or presentation under Subsection (5)(a), an offeror:

119 (i) may only explain, illustrate, or interpret the contents of the offeror's original
120 proposal; and

121 (ii) may not:

122 (A) address criteria or specifications not contained in the offeror's original proposal;

123 (B) correct a deficiency, inaccuracy, or mistake in a proposal that is not an immaterial
124 error;

125 (C) correct an incomplete submission of documents that the solicitation required to be
126 submitted with the proposal;

127 (D) correct a failure to submit a timely proposal;

128 (E) substitute or alter a required form or other document specified in the solicitation;

129 (F) remedy a cause for an offeror being considered to be not responsible or a proposal
130 not responsive; or

131 (G) correct a defect or inadequacy resulting in a determination that an offeror does not
132 meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds
133 established in the solicitation.

134 (6) (a) Except as provided in Subsection (7)(b) relating to access to management fee
135 information, and except as provided in Subsection (9), each member of the evaluation
136 committee is prohibited from knowing, or having access to, any information relating to the

137 cost, or the scoring of the cost, of a proposal until after the evaluation committee submits its
138 final recommended scores on all other criteria to the issuing procurement unit.

139 (b) The issuing procurement unit shall:

140 (i) if applicable, assign an individual who is not a member of the evaluation committee
141 to calculate scores for cost based on the applicable scoring formula, weighting, and other
142 scoring procedures contained in the request for proposals;

143 (ii) review the evaluation committee's scores and correct any errors, scoring
144 inconsistencies, and reported noncompliance with this chapter;

145 (iii) add the scores calculated for cost, if applicable, to the evaluation committee's final
146 recommended scores on criteria other than cost to derive the total combined score for each
147 responsive and responsible proposal; and

148 (iv) provide to the evaluation committee the total combined score calculated for each
149 responsive and responsible proposal, including any applicable cost formula, weighting, and
150 scoring procedures used to calculate the total combined scores.

151 (c) The evaluation committee may not:

152 (i) change its final recommended scores described in Subsection (6)(a) after the
153 evaluation committee has submitted those scores to the issuing procurement unit; or

154 (ii) change cost scores calculated by the issuing procurement unit.

155 (7) (a) As used in this Subsection (7), "management fee" includes only the following
156 fees of the construction manager/general contractor:

157 (i) preconstruction phase services;

158 (ii) monthly supervision fees for the construction phase; and

159 (iii) overhead and profit for the construction phase.

160 (b) When selecting a construction manager/general contractor for a construction
161 project, the evaluation committee:

162 (i) may score a construction manager/general contractor based upon criteria contained
163 in the solicitation, including qualifications, performance ratings, references, management plan,

164 certifications, and other project specific criteria described in the solicitation;

165 (ii) may, as described in the solicitation, weight and score the management fee as a
166 fixed rate or as a fixed percentage of the estimated contract value;

167 (iii) may, at any time after the opening of the responses to the request for proposals,
168 have access to, and consider, the management fee proposed by the offerors; and

169 (iv) except as provided in Subsection (9), may not know or have access to any other
170 information relating to the cost of construction submitted by the offerors, until after the
171 evaluation committee submits its final recommended scores on all other criteria to the issuing
172 procurement unit.

173 (8) (a) The deliberations of an evaluation committee may be held in private.

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

177 (9) An issuing procurement unit is not required to comply with Subsection (6) or
178 (7)(b)(iv), as applicable, if the head of the issuing procurement unit or a person designated by
179 rule made by the applicable rulemaking authority:

180 (a) signs a written statement:

181 (i) indicating that, due to the nature of the proposal or other circumstances, it is in the
182 best interest of the procurement unit to waive compliance with Subsection (6) or (7)(b)(iv), as
183 the case may be; and

184 (ii) describing the nature of the proposal and the other circumstances relied upon to
185 waive compliance with Subsection (6) or (7)(b)(iv); and

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