



Purchasing Policy Template

Prepared for

**The adoption and use of Special and Special Service Districts
in Utah in consultation with their legal counsel**

**Prepared by
The Utah Association of Special Districts
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SOUTH DAVIS SEWER DISTRICT

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SOUTH DAVIS SEWER DISTRICT
PURCHASING POLICY AND PROCEDURES¹

I. BACKGROUND

- A. **Policy:** This shall be known as the _____ (the “District”) Purchasing Policy (the “Policy”).
- B. **Purpose:** The purpose of this Policy is to identify the procedure for approval and payment of all purchases and encumbrances by the District and to ensure that all such payments and encumbrances are fair and reasonable and are not in conflict with applicable law. The Policy is applicable to all Board Members and employees.
- C. **Applicability of the Utah Procurement Code:** The District is subject to the Utah Procurement Code (Utah Code Ann. §§ 63G-6a-101 *et. seq.*), referred to herein as the “Act” or the “Procurement Code” and purchases by the District shall be made in accordance with applicable sections of the Procurement Code, as now constituted or as it may be amended and modified from time to time. For purposes of the application of the Procurement Code and this Policy, the District is a procurement unit with independent procurement authority.
1. **Exception - State or Federal Law or Regulations:** Notwithstanding the provisions of Subsection C. immediately above, whenever any purchase or encumbrance is made with state or federal funds and applicable state or federal law or regulations are in conflict with this Policy, to the extent that following the provisions of this Policy might jeopardize the use of those funds or future state or federal funds, such conflicting provisions of this Policy shall not apply and the District shall follow the procedure required by the applicable state or federal law or regulation.
 2. **Exception - Federal Funding/Grants:** When a procurement involves the expenditure of federal assistance or contract funds, the District shall comply with any mandatorily applicable federal law and regulations which are not reflected in this Policy. This Policy shall not prevent the District from complying with the terms and conditions of any grant, gift, or bequest that are otherwise consistent with law.

II. DEFINITIONS

As used in the Policy, the foregoing and the following definitions shall be applicable.

- A. **Board:** The legislative body of the District is referred to herein as the “Board”. For purposes of the Procurement Code and this Policy, the Board is the Rulemaking Authority for the District.

¹ The Policy is based, in material part, on purchasing rules found in Utah Administrative Code Rule R3 that have been adopted by the Utah State Procurement Policy Board, which would be the rulemaking authority for the District if the District had not adopted its own Purchasing Policy as authorized under Utah Code Ann. § 63G-6a-103 (76)(i).

- B. Statutory Definitions:** The definitions of terms set forth in Utah Code Ann. § 63G-6a-103, as they may be amended from time-to-time are, to the extent applicable to this Policy and the activities of the District, incorporated herein by this reference.
- C. Procurement Official:** The General Manager shall be designated as the District's "Procurement Official" and other employees of the District may act as Procurement Officials as authorized and delegated by the Board and/or the Procurement Official. EXHIBIT A Designates Procurement officials and areas of responsibility regarding purchases. It may be modified from time to time by the General Manager.
- D. Additional Definitions:**
1. Bid Bond: is either cash or an insurance agreement, accompanied by a monetary commitment, by which a third party (the Surety) accepts liability and guarantees that the bidder will not withdraw the bid. The bidder will furnish bonds in the required amount and, if the contract is awarded to the bonded bidder, the bidder will accept the contract as bid or the cash will be forfeited or the surety will pay the specified bond amount to the District.
 2. Bid Rigging: is an agreement among potential competitors to manipulate the competitive bidding process, for example, by agreeing not to bid, to bid a specific price, to rotate bidding, or to give kickbacks.
 3. Bid Security: means the deposit of cash or a certified check, cashier's check, bank draft, money order, or bid bond submitted with a bid and serving to guarantee to the District that the bidder, if awarded the contract, will execute such contract in accordance with the bidding requirements and the contract documents.
 4. Brand Name or Equal Specification: means a specification which uses a brand name specification to describe the standard of quality, performance, and other characteristics being solicited, and which invites the submission of equivalent products. The District will be the final arbiter of whether a vendor's submission is an equivalent product.
 5. Brand Name Specification: means a specification identifying one or more products by manufacturer name, product name, unique product identification number, product description, SKU or catalogue number.
 6. Collusion: occurs when two or more persons act together to achieve a fraudulent or unlawful act or result. Collusion inhibits free and open competition in violation of law.
 7. Cost Analysis: means an evaluation of cost data for the purpose of arriving at estimates of costs to be incurred, prices to be paid, costs to be reimbursed, or costs actually incurred.

8. Cost Data: means factual information concerning the cost of labor, materials, overhead, and other cost elements which are expected to be incurred or which have actually been incurred by the contractor in performing the contract.
9. Evaluation Criteria: means the objective or subjective criteria that will be used to evaluate a vendor's response to a solicitation.
10. Manager: as used in this Policy refers to the chief executive officer of the District, whether that person's official title is "General Manager", "Executive Director", or any other title, and includes any designee of the Manager.
11. Mandatory Requirement: means a condition set out in the specifications/statement of work that must be met without exception.
12. New Technology: means any invention, discovery, improvement, or innovation that was not available to the District on the effective date of the contract, whether or not patentable, including, but not limited to, new processes; emerging technology; machines, and improvements to or new applications of existing processes, machines, manufactures and software; new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable; and any new process, machine, including software, and improvements to, or new applications of, existing processes, machines, manufactures and software.
13. Objective Criteria: means the solicitation criteria that will be evaluated and scored based solely on the measurable and verifiable facts, evidence, and documentation provided in each vendor's solicitation response.
14. Participating Addendum: means an agreement issued in conjunction with a Cooperative Contract.
15. Payment Bond: is a bond that guarantees payment for labor and materials expended on the contract.
16. Performance Bond: is a promise to pay the District a certain amount if the contractor fails to meet an obligation, such as fulfilling the terms of a contract.
17. Person: means an individual, an association, an institution, a corporation, a company, a trust, a limited liability company, a partnership, a political subdivision, a government office, department, division, bureau or other body of government, and any other organization or entity.
18. Price Analysis: means the evaluation of price data without analysis of the separate cost components and profit.
19. Price Data: means factual information concerning prices for procurement items.

20. Reasonable Person Standard: means an objective test to determine if a reasonably prudent person who exercises an average degree of care, skill, and judgment would be justified in drawing the same conclusions under the same circumstances or having knowledge of the same facts.
21. Subjective Criteria: means the solicitation criteria that will be evaluated and scored based on the personal judgement, interpretations, and opinions of the evaluators after reviewing and analyzing the information presented in each vendor's solicitation response.
22. Steering a Contract to a Favored Vendor: occurs when a person involved in any phase of the procurement process acts with bias or prejudice in violation of the law to favor one vendor over another vendor in awarding a District contract. It includes collusion or manipulation of the procurement process; accepting any form of illegal gratuity, bribe or kickback; awarding a contract to a vendor without engaging in a standard procurement process without proper justification; bid rigging; using specifications that are overly restrictive, beyond the reasonable needs of the District, or that give an unfair advantage to a particular vendor without proper justification; intentionally dividing a purchase to avoid engaging in a standard competitive procurement process; leaking solicitation or other information to a particular vendor that is prejudicial to other vendors; participation in the procurement process while having a financial conflict of interest; and any other knowing and intentional effort to, without justification, favor or disfavor a vendor.

III. GENERAL PROVISIONS

- A. Procurement Official: Except as otherwise specifically authorized by the Board, no officer or employee of the District shall purchase for and on behalf of the District any material or supplies, goods, wares, merchandise, or services of any kind or character, except through the Procurement Official or his/her designee, and no voucher, check or other method of payment shall be honored if this procedure is not followed; provided, however, that this Subsection shall not apply to emergency purchases as specifically provided in Subsection X.A.5 of this Policy.
- B. Approval of Purchases: Except as otherwise provided in this Policy or as authorized and delegated by the Board, the Board must approve all expenditures of the District. Notwithstanding the foregoing, however, the Procurement Official, and/or any other person designated by the Board to act as the "budget officer" and/or the "financial officer" of the District under the provisions of Utah Code Ann. §§ 17B-1-601 *et. Seq.*, may issue payroll checks and direct deposits that are prepared in accordance with a schedule approved by the Board and pay routine expenditures such as utility bills, withholding deposits for federal, state and FICA, the District's share of FICA, withholdings for health and life insurance, postage, nondiscretionary payments required under a contract that has been approved by the Board and for which sufficient funds are included in the current District budget, and bond payments when due, and make transfers from one fund to another as part of routine bookkeeping procedures. Notwithstanding

anything contained in this Policy to the contrary, however, the Board will review all District expenditures on a quarterly or more frequent basis.

- C. **Availability of Funds:** No purchase shall be made and no encumbrance shall be incurred unless funds sufficient to cover the purchase or encumbrance are available, sufficient funds for the purchase are included in the current District budget, and the purchase is approved by the appropriate District officials as herein provided.
- D. **Delivery of Goods:** No officer or employee of the District shall request any merchant, dealer or other vendor to deliver goods to the District other than in compliance with the requirements of this Policy and pursuant to any required approval from the Board or the Procurement Official, except in the case of an emergency purchase as provided in Subsection X.A.5 of this Policy.
- E. **Cooperative Purchasing and Purchasing Preferences:**
 - 1. **Cooperative Purchasing:** Nothing contained in this Policy shall be construed to limit the ability of the District to purchase a procurement item from another procurement unit or join with other units of government in centralized or cooperative purchasing plans or systems, with proper authorization, including participating in state or federal public cooperative procurement contracts, as provided in Part 21 of the Procurement Code, entitled “Interaction Between Procurement Units”.
 - a. Cooperative purchasing will be conducted in accordance with the requirements set forth in Section 63G-6a-2105 of the Act.
 - b. In accordance with Section 63G-6a-2105, the District may obtain procurement items from state cooperative contracts.
 - i. The District may request additional volume discount pricing for large volume orders, provided the state cooperative contractor is willing to offer additional discounts for large volume orders, by issuing a “Request for Price Quotations” to a vendor on a state cooperative contract for the procurement item being purchased. The District may not, however, coerce, intimidate or in any way compel a vendor on a state cooperative contract to offer additional discount pricing.
 - ii. The Request for Price Quotations shall include:
 - (1) A detailed description of the procurement item;
 - (2) The estimated number or volume of procurement items that will be purchased;
 - (3) The period of time that price quotations will be accepted, including the date and time the price quotations will be opened;

- (4) The manner in which price quotations will be accepted;
 - (5) The place where price quotations shall be submitted; and
 - (6) The period of time the price quotation must be guaranteed.
 - iii. Price quotations shall be kept confidential until the date and time of the opening and may not be disclosed to other vendors on state cooperative contracts until after the date and time of the opening. Email quotations are acceptable.
 - iv. Price quotations should be opened in the presence of a minimum of two witnesses.
 - v. Price quotations will become public at the time of the opening.
- c. A state Cooperative Contract may not be used for:
 - i. An anti-competitive practice such as bid rigging; steering a contract to a preferred state cooperative contractor; utilizing auction techniques where price quotations are improperly disclosed and contractors bid against each other's price; disclosing pricing or other confidential information prior to the date and time of the opening; or any other practice prohibited by the Procurement Code.
 - d. All sales to the District resulting from quotations received under the process conducted in accordance with Subsection E.1.b. will be recorded as usage under the existing state cooperative contract, are subject to the administrative fee associated with the state cooperative contract, and will be reported to the Division of Purchasing and General Services.
- 2. Preference for State Products and Resident Contractors: Section 63G-6a-1002 of the Procurement Code provides for a reciprocal preference for the providers of procurement items produced, manufactured, mined, grown, or performed in Utah and Section 63G-6a-1003 provides a reciprocal preference for resident Utah contractors. In the event that more than one equally low preferred bidder or contractor qualifies for the reciprocal preference, the Procurement Official shall consider the preferred bidders or contractors to be tied and will follow the process specified in Section 63G-6a-608 of the Procurement Code and Subsection VIII.C.13 of this Policy.

F. Purchase Records:

- 1. Invoices and Receipts: Invoices prepared by the vendor, cash register receipts and/or other written documentation to substantiate District expenditures will be maintained as part of the District's financial records in accordance with customary procedures for public entities such as the District. Whenever possible, original invoices will be used as supporting documentation for District purchases. Written records of procurements for which an expenditure of \$100 or more is made shall include the details required by Section 63G-6a-2002(4) of the Act (the

name of the vendor, a description of the procurement item, the date of the procurement, and the expenditure amount) and be maintained for the longer of six years or the time otherwise required by law.

2. **Penalty for Double Payment:** An intentional effort on the part of a supplier to obtain a double payment may serve as the basis for a “debarment” under which that supplier will be precluded from providing materials, goods and/or services to the District for a prescribed time. Similarly, any intentional effort on the part of a District employee to receive a double reimbursement may result in sanctions, including termination.
3. **Use of Forms:** All departments are required to file with the Procurement Official requisitions for their requirements of supplies, contractual services, materials and equipment including such details and information as may be required by the Procurement Official.

H. **Inspection:** The Procurement Official shall cause to be inspected, or supervise the inspection of, all deliveries of supplies, materials and equipment to determine their conformance with the specifications set forth in any applicable solicitation or contract. The Procurement Official is to be notified by the responsible department head forthwith of any item not received within 30 days after a reasonable delivery time has elapsed.

I. **Technology Modification:** Any contract may be subject to a modification for technological upgrades if a provision to that effect was included in the solicitation or the contract. Any modification to a contract for upgraded technology should be substantially within the scope of the original procurement or contract. Then, if both parties agree to the modification, the contract may be modified for a technological upgrade without going through a new procurement process. A technological upgrade or modification may extend the contract term beyond the original term of the contract only as provided in the Procurement Code and this Policy.

IV. CONTRACTUAL TERMS

A. **Multi-Year Contracts:** The District may enter into multi-year contracts in accordance with Section 63G-6a-1204 of the Act. In particular, a contract for supplies or services may be entered into for any period of time, up to five years, deemed to be in the best interest of the District; provided that the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Prior to the utilization of a multi-year contract, it should be determined that estimated requirements cover the period of the contract and are reasonably firm and continuing and that a multi-year contract will serve the best interest of the District by encouraging effective competition, promoting economies or savings in District procurement, such as reducing the administrative burden in the procurement process or providing an incentive for a vendor to provide a volume or term discount or improve productivity through capital investment or better technology, or otherwise will be beneficial to the District. This determination may, but need not be, in writing.

1. Exceptions: Section 63G-6a-1204 does not apply to a contract for the design or construction of a facility, a road, a public transit project, or a contract for the financing of equipment, the contract term for which may exceed five years as determined by the District.
2. In Excess of Five Years: Notwithstanding the foregoing, or anything to the contrary in this Policy, a contract may be entered into for a period in excess of five years, or for an indeterminate period that is terminable at-will by the District, with or without cause, based upon a written determination by the Procurement Official, as provided in Section 63G-6a-1204, that:
 - a. A longer period is necessary in order to obtain the procurement unit,
 - b. A longer period is customary for industry standards, or
 - c. A longer period is in the best interest of the District.

The Procurement Official's written determination shall be included in the file for the subject procurement.

3. Availability of Funds: As allowed by law or the underlying contract, when funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, a multi-year contract may be canceled.
4. Indefinite Term: Based upon a written determination by the Procurement Official as provided in paragraph 1 above, with the concurrence of the contracting parties, a contract may be entered into as, or may be modified to become, an indefinite term contract terminable at will by the District.
 - a. Acting as the procurement official of the District, the Board has determined, and hereby determines, that it may be in the best interest of the District to be served by professionals having an institutional knowledge of the District, on the same basis as it best serves the District to retain valuable long-term District employees, and that professional services, including but not limited to design professional services, as defined in the Act, may be procured for an indefinite term and be terminable at will by the District.

B. Type of Contract:

1. Generally: Subject to the limitations of this Section B., any type of contract which will promote the best interest of the District may be used provided that, if a contract other than a firm fixed price contract will be used, the Procurement Official will make a written determination as required by Section 63G-6a-1205(3) of the Act that the proposed contractor's accounting system will permit the timely development of all necessary cost data in the form required by the specific

contemplated contract type; the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles; and the use of a specified type of contract, other than a firm fixed price contract, is in the best interest of the District taking into consideration the criteria specified in Section 63G-6a-1205(3)(c). Various contract types that may be used are identified in Section 63G-6a-1205(4).

2. Cost-Plus-a-Percentage-of-Cost: As provided in Section 63G-6a-1205(5) of the Act, the District may not enter into a cost-plus-a-percentage-of-cost ("cost plus") contract unless the contract form is approved by the Procurement Official; it is standard practice in the industry to obtain the subject procurement item through a cost plus contract; and any percentage and the method of calculating costs stated in the contract are in accordance with industry standards.
3. Cost Reimbursement: A cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the District than any other permitted contract type or that it is impracticable to obtain the procurement item using any other type of permitted contract, and the proposed contractor's accounting system will timely develop accurate cost data and allocate costs in accordance with generally accepted accounting principles.

C. Installment Payments: The District may make installment payments and contract prepayments in accordance with the requirements of Section 63G-6a-1208 of the Act.

1. Written Funding: A written finding by the Procurement Official under Section 63G-6a-1208 generally is required before either installment payments or prepayments are allowable. However, the Procurement Official's determination that a prepayment is necessary or beneficial to the District need not be in writing when (i) it is customary in the industry to prepay for the procurement item or (ii) the District will receive an identifiable benefit by prepaying, such as a lower cost, the receipt of additional procurement items, early delivery, better service or better contract terms.

D. Multiple Award Contracts: As authorized under Section 63G-6a-1204.5 of the Act, the District may enter into multiple award contracts with two or more bidders or offerors being awarded a contract under a single solicitation. When it is anticipated that the District may enter into multiple award contracts before issuing the invitation for bids or request for proposals, the invitation for bids or request for proposals may state that the District may enter into multiple award contracts at the end of the procurement process provided, however, that the failure to include that statement in the invitation for bids or request for proposals will not preclude the District from entering into multiple award contracts at the end of the procurement process if doing so is determined by the Procurement Official to be in the best interest of the District.

1. Lowest Cost: The contracts awarded to more than one contractor under a single solicitation may state that orders will be placed first with the low bidder, unless the lowest cost bidder cannot provide the needed procurement item as and when

desired by the District, in which event the next lowest cost vendor who is able to provide the procurement item as and when desired by the District may receive the order.

2. Contract Awarded by Category: Multiple award contracts may also be awarded under one solicitation with contracts being awarded by category based upon the lowest cost bid or proposal per category, with only one vendor being awarded a contract for each category.
3. Line Item Contracts: In addition, multiple award contracts may be awarded by line item, provided that the solicitation indicates that a contract may be awarded based on the lowest bid per line item, task or service and only one vendor may be awarded a contract for each line item, task or service.
4. Other Objective Methodology: Multiple award contracts may also be awarded based on any other specific objective methodology approved by the Procurement Official. For example, multiple award contracts may be issued to design professional firms based on the potential vendor's or contractor's field or area of expertise, or vendors may be selected for particular projects or deliveries using a rotation system organized alphabetically, numerically or randomly, or on any other basis specified in the solicitation and/or the resulting contracts.
5. Best Value: The District may place orders with any multiple award contract vendor or contractor based on the procurement item that best meets the needs of the District or based on the best value as determined by cost and non-price criteria specified in the solicitation.
6. Favored Vendor Prohibition: A multiple award contract may not be used to steer purchases to a favored vendor or use any other means or methods that do not result in fair consideration being given to all vendors who have been awarded a contract under a multiple award.

V. SMALL PURCHASES

- A. **General**: Small purchases shall be conducted in accordance with the requirements set forth in Section 63G-6a-506 of the Procurement Code and this Part V. Unless otherwise required as part of another standard procurement process being used pursuant to requirements of this Part V, small purchases do not require a solicitation or public notice.
 1. Individual Procurement Threshold: The individual procurement item threshold is \$5,000. When purchasing an individual procurement item costing up to \$5,000, the District may select the best source by direct award without seeking competitive bids or quotes.
 2. Single Procurement Aggregate Threshold: The single procurement aggregate threshold is \$10,000 for multiple individual procurement items purchased from one source at one time.

3. Annual Cumulative Threshold: The annual cumulative threshold for purchases made from the same source is \$50,000.
4. Information Technology: The threshold for purchasing information technology from and the same source is \$500,000.00.
5. Vendor Prequalification: Should the District elect to pre-qualify vendors and/or develop an approved vendor list for a small purchase, the District will follow the process described in Section 63G-6a-507 of the Act or Part 15 of the Procurement Code for the selection of design professional services.
6. Rotation System: Whenever practicable, the District will use a rotation system or another system designed to allow for competition when using the small purchases process.

B. Small Purchases Threshold for Design Professional Services:

1. Threshold Amount: The small purchase threshold for “design professional” (architecture, engineering, master planning and programing, or commercial interior design) services is a maximum amount of \$100,000 per project.
2. Procedure: Design Professional services of \$100,000 or less may be procured by direct negotiation after reviewing the qualifications of a minimum of three design professional individuals or firms. If Design Professional services may be utilized with some frequency, an approved vendor list, preferably including at least three pre-qualified vendors, may be utilized following the process described in Section 63G-6a-507 of the Act. The District will rank the Design Professional firms in order and begin fee negotiations, up to \$100,000, with the highest ranked firm. If an agreement cannot be reached with the highest ranked individual or firm, the District will move to the next highest ranked individual or firm and so on, until a fee agreement is reached. If a fee agreement cannot be reached with the first group of selected individuals or firms, the District may select additional Design Professional individuals or firms using the same process, or may cancel the procurement.
3. Procurement With No Approved Vendor List: If the District does not have an approved vendor list, the Procurement Official may nevertheless obtain the services of a design professional using the small purchases approach by identifying at least three firms or individuals that are reasonably determined to be capable of providing the desired design professional services, conducting due diligence to obtain information that is deemed to be reliable regarding each firm or individual, and then ranking the firms and individuals on the list. Once the rankings have been established, procedures stated in B.2 above will be used to obtain the services of a design professional.

4. Specifications: The District will include minimum specifications when using the small purchase threshold for Design Professional services.

C. Small Purchases Threshold for Construction Projects:

1. Threshold: Except as otherwise specified, the small construction project threshold is a maximum of \$250,000 for direct construction costs, including design and allowable furniture or equipment costs;
2. Procedure: The District will follow the process described in Section 63G-6a-506 of the Act to prequalify potential vendors and in Section 63G-6a-507 to develop an Approved Vendor List, or other applicable selection method described in the Procurement Code for construction services.
3. Specifications: Minimum specifications will apply when using the small purchases threshold for construction projects.
4. Up to \$100,000: The District may procure small construction projects up to a maximum of \$100,000 by direct award without seeking competitive bids or quotes after documenting that all building code approvals, licensing requirements, permitting and other construction related requirements will be met. The awarded contractor must certify that the contractor is capable of meeting the minimum specifications of the project.
5. From \$100,000 to \$250,000: The District may procure small construction projects costing more than \$100,000 up to a maximum of \$250,000 by obtaining a minimum of two competitive quotes that include minimum specifications, and will award the work to the contractor with the lowest quote that meets the specifications after documenting that all applicable building code approvals, licensing requirements, permitting and other construction related requirements will be met. If the District requests competitive quotes from vendors/contractors on an approved vendor list, vendors may be selected using a random or other rotation system, based on each vendor's expertise or field, or another method approved by the Procurement Official may be used to select vendors from whom price quotes will be obtained. In any event, the District may obtain an additional price quote from the vendor that provided the lowest price quote on the most recently completed construction procurement conducted by the District using an approved vendor list.
6. Up to \$2,500,000 Using an Approved Vendor List: The small construction project threshold per individual project, using an approved vendor list, is a maximum of \$2,500,000 for direct construction costs, including design and allowable furniture or equipment costs.
 - a. For individual construction projects costing more than \$250,000 up to a maximum of \$2,500,000, all vendors/contractors on the District's approved vendor list will be invited to submit bids in accordance with the provisions set forth in Part 6 of the Procurement Code, except that public

notice requirements in Part 6 are waived. The quotes or bids are to include minimum specifications, and the District may award the work to the contractor with the lowest price quote or bid that meets the specifications, after documenting that all applicable building code approvals, licensing requirements, permitting and other construction related requirements will be met.

- b. If an approved vendor list is not established under Section 63G-6a-507 of the Act, the District will procure construction projects costing more than \$250,000 using an invitation to bid or other approved source selection method outlined in the Procurement Code, and may do the same for construction projects that cost less than \$250,000, in the Procurement Official's discretion.

D. Quotes for Small Purchases between \$5,001 and \$50,000:

1. From \$5,000 to \$10,000: For procurement item(s) other than design professional services, other professional or consulting services, or construction, where the cost is greater than \$5,000 up to a maximum of \$10,000, the District will obtain at least two price quotations based on minimum specifications and may purchase the procurement item from the responsible vendor offering the lowest quote or best value that meets the specifications.
2. Above \$10,000 to \$50,000: For procurement item(s) costing more than \$10,000, up to a maximum of \$50,000, the District will obtain at least two competitive quotes that include minimum specifications and may purchase the procurement item from the responsible vendor offering the lowest quote that meets the specifications.
3. Above \$50,000: For procurement item(s) costing more than \$50,000, the District will conduct an invitation for bids or other procurement process outlined in the Procurement Code.
4. Public Record: The names of the vendors offering quotations or bids and the date and amount of each quotation or bid will be recorded and maintained as a governmental record.

E. Small Purchases of Professional Service Providers and Consultants:

1. Up to \$100,000: The small purchase threshold for professional service providers and consultants, other than design professionals, is a maximum amount of \$100,000 per budget year.
2. Procedure: The services of professional service providers and consultants, other than design professional services, may be obtained using the approach described in B. above, which is applicable to design professional services, with such modifications as may be deemed to be appropriate by the Procurement Official.

After reviewing the qualifications of a minimum of three professional service providers or consultants, the District may obtain professional services or consulting services. Up to a maximum cost of \$100,000 by direct negotiation after reviewing the qualification of a minimum of three firms or individuals.

3. Cost Not Primary: The District may base the selection on documented factors such as experience, knowledge and reputation, rather than based solely on cost, but will seek the best value for the District.

F. **Optional Competitive Procurement**: Notwithstanding the foregoing, the District may require any acquisition of supplies, materials or equipment to be competitively bid or be the subject of a request for proposals if, in the determination of the Board or the Procurement Official, such action would be in the best interest of the District.

G. **Petty Cash**: A limited amount of “petty cash” may be maintained at the District office to be used for small purchases that are needed before regular purchasing procedures can be implemented. All petty cash slips or other proof of the amount of the petty cash expenditure must be signed by the employee responsible for the purchase and approved by either the Procurement Official or the person responsible for accounts payable of the District.

H. **Open Charge Accounts**: The District, for convenience, may maintain one or more open charge accounts with vendors that regularly provide supplies and materials and may utilize credit cards. Purchases on the account must be approved by the Procurement Official or an authorized designee prior to the purchase. Receipts are to be maintained for all credit card purchases and vendor statements are to be reconciled against those receipts prior to making credit card payments. Unless there is a dispute arising from the reconciliation or otherwise, or sufficient funds are not immediately available, all credit card and charge account charges are to be timely paid so as to avoid finance charges. No open charge account is to be utilized to circumvent the competitive requirements of the Act or this Policy.

VI. **VENDOR PREQUALIFICATION**

A. **Prequalification of Potential Vendors**: The District may establish approved vendor lists in accordance with the requirements of Section 63G-6a-507 of the Act.

B. **Approved Vendor Lists Using the Small Purchase Process**:

1. Small Purchase Thresholds: Contracts or purchases from an approved vendor list may not exceed the thresholds stated in Part V of this Policy. Thresholds for other approved vendor lists may be established by the Procurement Official.
2. Request for Proposals or Qualifications: An approved vendor list may be established using the request for proposals process or the request for statements of qualifications process, as deemed appropriate by the Procurement Official.

C. Quotes from Vendors:

1. Number of Quotations: The number of required quotes or quotations (“quotes”) stated in this Policy are minimum requirements. Whenever practicable, more quotes may be requested than the prescribed minimum number, up to obtaining quotes from all vendors on an approved vendor list.
2. Lowest Quote from Prior Procurement. In each instance, the District may obtain an additional quote from the vendor that provided the lowest cost quote on the most recently completed procurement conducted using an approved vendor list.
3. Lowest Quote for Current Procurement. Unless otherwise stated in or allowed under this Policy, the District will purchase the procurement item from the vendor on the approved vendor list that provides the lowest cost quote for the specified procurement item.

VII. SPECIFICATIONS

A. CONTENT: Specifications for the procurement item(s) being sought will be included in solicitation documents.

1. Economy and Competition: Specifications will be drafted with the objective of clearly describing the District’s requirements and encouraging competition.
 - a. Specifications will emphasize the functional or performance criteria necessary to meet the needs of the District. District needs are determined by District employees most familiar with the use of the item being procured.
 - b. All specifications prepared for the solicitation of bids or proposals will seek to promote over-all economy and best uses for the purposes intended and encourage competition in satisfying the District's needs, and not be unduly restrictive.
 - c. The requirements of this Section A regarding the purposes and non-restrictiveness of specifications shall apply to all specifications including, but not limited to, those prepared for the District by architects, engineers, designers, and draftsmen.
2. Conflicts Generally Prohibited: Except as specifically provided in this Subsection 2, persons with a conflict of interest, or who anticipate responding to the solicitation for which the specifications are written, may not participate in writing specifications. A person may be retained to assist in writing specifications, scopes of work, requirements, qualifications, or other components of a solicitation. A person assisting in writing specifications may not, at any time during the procurement process, be employed in any capacity by, nor have an ownership interest in, an individual, public or private corporation, governmental entity, partnership, or unincorporated association bidding on or submitting a proposal in

response to the solicitation provided, however, that this restriction shall not apply to a design build construction project or other procurements as determined in writing to be in the best interest of the District by the Procurement Official. Notwithstanding anything to the contrary stated in this Policy, however, a person or firm that responds to a Request for Information issued by the District or presents an unsolicited offer will not be precluded from participating in a subsequent solicitation that includes specifications or information from the response to the Request for Information or from the unsolicited offer. Furthermore, the ownership prohibition shall not apply to owning stock in a publicly traded company that represents no more than a 1% interest in the company.

- a. Violations of the above may result in:
 - i. The bidder or offeror being declared ineligible to be awarded the contract;
 - ii. The solicitation being canceled;
 - iii. Termination of an awarded contract; or
 - iv. Any other action determined to be appropriate by the Procurement Official or the Board.

3. Brand Name or Equal Specifications:

- a. Brand name or equal specifications may be used when:
 - i. An "or equivalent" reference is included in the specification; and,
 - ii. As many other brand names as reasonably practicable are also included in the specification.
- b. Brand name or equal specifications should include a description of the particular required design and functional or performance characteristics. There should be a good faith effort to describe specifications that are unique to the referenced brands in sufficient detail to enable a vendor to respond with an equivalent product, if one is available.
- c. When a manufacturer's specification is used in a solicitation, the solicitation will state the minimum acceptable requirements of an equivalent. When reasonably practicable, the District will name at least two manufacturer's specifications.

4. Brand Name Sole Source Requirements:

- a. If only one brand or product can meet the District's requirements set forth in the specifications, the District may conduct the procurement in accordance with Section 63G-6a-802 of the Act and will solicit as many providers of the brand as is practicable.

- b. If there is only one provider that can meet the requirements, the District will make the purchase as a sole source procurement in accordance with Section 63G-6a-802 of the Act.
- c. Notwithstanding the foregoing, or anything to the contrary in this Policy, when the equipment or other procurement items designated by brand name for a construction project are projected to cost no more than ten percent (10%) of the total cost of the construction project, a designated brand may be identified in the specifications and the District will not be required to consider arguably equivalent products.

VIII. COMPETITIVE PROCUREMENT

A. **Request for Information:** Before issuing an invitation for bids or a request for proposals, the District may issue a request for information to obtain information, comments or suggestions, as provided in Section 63G-6a-409 of the Act.

1. **Use:** A request for information may not be used to negotiate fees, make a purchase, determine whether a procurement may be made without utilizing a standard procurement procedure, or enter into a contract, but may be used to seek a wide range of information including:
 - a. The availability of a procurement item;
 - b. Delivery schedule;
 - c. Industry standards and practices;
 - d. Product specification;
 - e. Training;
 - f. New Technology;
 - g. Capabilities of potential providers of a procurement item; and
 - h. Alternate solutions to meet the procurement need.
2. **Confidentiality:** A request for information should indicate the procedure for business confidentiality claims and other protection provided by the Government Records Access and Management Act, Title 63G, Chapter 2 of the Utah Code. *See* Utah Code Ann. § 63G-6a-409(5).

B. **Competitive Bids and Proposals - Over \$50,000.00:** Except as otherwise allowed by law and this Policy, contracts for services, supplies, materials, or equipment where the amount to be paid annually by the District is more than \$50,000.00 generally will be awarded only after competitive sealed bids or proposals have been requested and received. Sealed written bids or proposals are to be obtained from at least three suppliers (provided that there are at least three available suppliers willing to submit a bid or

proposal). Documentation regarding the sealed written bids or proposals is to be maintained by the District and the purchase is to be documented as required by the District's applicable rules and regulations.

C. **Bidding Procedure:** Competitive Sealed Bidding shall be conducted in accordance with the requirements set forth in Part 6 of the Act and as provided in this Policy.

1. Invitation for Bids: When a contract is to be awarded by competitive sealed bidding, an invitation for bids will be issued.
 - a. The invitation for bids shall include the information required by Section 63G-6a-603 of the Act and may include a "Bid Form" or forms providing lines for bidder information such as the bid price, acknowledgment of the receipt of addenda issued by the District if any, and the bidder's signature.
 - b. Bidders may be required to submit descriptive literature and/or product samples, free of charge unless otherwise stated in the invitation for bids, to assist in the evaluation to determine whether a procurement item meets the specifications and other requirements of the invitation for bids. If not destroyed by testing, product samples will, upon written request within any deadline stated in the invitation for bids, be returned at the bidder's expense. Samples must be labeled or otherwise identified as specified in the invitation for bids.
 - c. Bid, payment and performance bonds or other security may be required in amounts set forth in the invitation for bids and as prescribed by applicable law.
 - d. Bids must be based upon a definite calculated price.
 - i. "Indefinite quantity contract" means a fixed price contract for an indefinite amount of procurement items to be supplied as ordered by the District and does not require a minimum purchase amount, or provide a maximum purchase limit;
 - ii. "Definite quantity contract" means a fixed price contract that provides for the supply of a specified amount of goods over a specified period, with deliveries scheduled according to a specified schedule; and
 - iii. Bids may not be based on using or referencing another bidder's price, including a percentage discount, a formula, any other amount related to another bidder's price, or conditions related to another bid.
2. Addenda to Invitation for Bids: Prior to the deadline for the submission of bids, the District may issue addenda which may modify any aspect of the invitation for bids.

- a. Addenda will be distributed within a reasonable time to allow prospective bidders to consider the addenda in preparing bids.
- b. After the due date and time for submitting bids, at the discretion of the Procurement Official, addenda to the invitation for bids may be limited to bidders that have submitted bids, provided the addenda do not make a substantial change to the invitation for bids that, in the opinion of the Procurement Official, likely would have impacted the number of bidders responding to the invitation for bids.

3. Pre-Bid Conferences/Site Visits:

- a. Pre-bid conferences and/or site visits may be conducted to explain the procurement requirements. If there is to be a pre-bid conference or a site visit, the time and place of the pre-bid conference/site visit should be stated in the invitation for bids.
- b. A pre-bid conference or a site visit may be mandatory, but only if the invitation for bids states that the conference/site visit is mandatory and provides the location, date and time of the conference/site visit and also states that failure to attend a mandatory conference/site visit will result in the disqualification of any bidder that does not attend. At the discretion of the Procurement Official, listening to or viewing an audio or video recording of a pre-bid conference or site visit may be substituted for in-person attendance.
- c. Attendance at a pre-bid conference may be conducted via any of the following as determined by the Procurement Official:
 - i. Attendance in person;
 - ii. Teleconference participation;
 - iii. Webinar, ZOOM, or similar participation; or
 - iv. Other electronic media approved by the Procurement Official.
- d. A site visit may generally only be attended in person provided, however, at the discretion of the Procurement Official, an audio or video recording of a site visit may be used.
- e. Attendance and participation at all pre-bid conferences and site visits must be by an authorized representative of the vendor submitting a bid and as may be further specified in the invitation for bids.
- f. The District may maintain an attendance log including the name of each attendee, the firm the attendee is representing, the attendee's contact information, and any documents distributed to the attendees; and the District may maintain minutes of the pre-bid conference/site visit.

- g. The District may, as appropriate, publish the attendance log, minutes of the pre-bid conference and any documents distributed at the pre-bid conference or site visit, or any oral modification made to any of the solicitation documents which is to be reduced to writing, as an addendum to the solicitation.
- 4. Public Notice: Public notice of the invitation for bids is to be given a reasonable time prior to the date set forth therein for the opening of bids, in accordance with Section 63G-6a-112 and this Section C.
- 5. Bids and Modifications to a Bid Received After the Due Date and Time:
 - a. Bids and modifications to a bid submitted electronically or by physical delivery after the established due date and time will not be accepted for any reason, except as determined under d. below.
 - b. When submitting a bid or modification electronically, bidders must allow sufficient time to complete the online forms and upload documents. The solicitation will end at the posted closing time, if applicable. If a bidder is in the process of uploading a bid when the closing time arrives, the bid or modification of the bid may not be accepted.
 - c. When submitting a bid or modification to a bid by physical delivery (U.S. mail, courier service, hand-delivery, or other physical means) bidders are solely responsible for meeting the deadline. Delays caused by a delivery service or other physical cause will not excuse the bid or a modification to a bid from being late.
 - i. All bids or modifications to bids received by physical delivery will be date and time stamped or marked.
 - d. To the extent that an error on the part of the District or an employee of the District results in a bid or modification to a bid not being received by the established due date and time, the bid or modification to a bid will be accepted as being on time.
- 6. Opening and Recording of Bids: When practical, bids will be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and any other relevant information specified by this Section C, together with the name of each bidder, shall be recorded. The record and each bid shall be open to public inspection.
- 7. Errors in Bids: The following shall apply to the correction or withdrawal of an inadvertently erroneous bid, or the cancelation of an award or contract that is based on an unintentionally erroneous bid. A decision to permit the correction or withdrawal of a bid or the cancellation of any award or contract shall be supported in a written document signed by the Procurement Official.

- a. Errors attributed to a bidder's error in judgment may not be corrected.
- b. Provided that there is no change in bid pricing or the cost evaluation formula, errors not attributed to a bidder's error in judgment may be corrected if it is in the best interest of the District and correcting the mistake maintains the fair treatment of other bidders.
 - i. Examples include:
 - (1) Missing signatures,
 - (2) Missing acknowledgment of receipt of an addendum;
 - (3) Missing copies of professional licenses, bonds, or insurance certificates, provided that copies are submitted by the deadline established by the Procurement Official to correct this mistake;
 - (4) Typographical errors;
 - (5) Mathematical errors not affecting the total bid price; or
 - (6) Other errors deemed by the Procurement Official to be immaterial or inconsequential in nature.
- c. The Procurement Official shall approve or deny, in writing, a bidder's request to correct or withdraw a bid.

8. Errors Discovered After the Award of Contract:

- a. Errors discovered after the award of a contract may only be corrected if, after consultation with the Procurement Official and the District's legal counsel, it is determined that the correction of the mistake does not violate the requirements of the Procurement Code or this Policy.
- b. Any such correction must be supported by a written determination signed by the Procurement Official.

9. Re-solicitation of a Bid:

- a. The District may cancel the solicitation and issue a new invitation for bids if the Procurement Official determines that:
 - i. A material change in the scope of work or specifications has occurred;
 - ii. Procedures outlined in the Procurement Code were not followed;
 - iii. Additional public notice is desired;
 - iv. There was a lack of adequate competition; or
 - v. Any other reason exists that causes re-solicitation to be in the best interest of the District.
- b. Re-solicitation may not be used to avoid awarding a contract to a qualified vendor in an attempt to steer the award of a contract to a favored vendor.

10. Bid Award: Unless the District elects to cancel the procurement (which the District may do, at the discretion of the Procurement Official, provided that the cancelation is not an attempt to steer the award to a favored vendor) or re-solicit bids, contracts are to be awarded with reasonable promptness by written notice to the lowest responsive and responsible bidder whose bid meets the requirements and objective criteria described in the invitation for bids.
- a. Bids shall be based on the lowest bid for the entire term of the contract, excluding renewal periods and, unless an exception is authorized in writing by the Procurement Official, cost may not be divided or evaluated on any other basis than the entire term of the contract, excluding renewal periods. The foregoing may not apply, however, if the cost for the entire term of the contract cannot be calculated with a reasonable degree of certainty. In that instance, costs that may be calculated with certainty may be used as the basis for the award.
 - b. In the event all bids for a construction project exceed available funds as certified by the appropriate fiscal officer, and the low responsive and responsible bid does not exceed such funds by more than 5%, the Procurement Official or Board is authorized, in situations where time, economic or other considerations preclude re-solicitation of work of a reduced scope, to negotiate an adjustment of the scope or bid price, including changes in the bid requirements, with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds.
11. Only One Bid Received:
- a. If only one responsive and responsible bid is received in response to an invitation for bids, including multiple stage bidding, an award may be made to the single bidder if the Procurement Official determines that the price submitted is fair and reasonable and other prospective bidders had a reasonable opportunity to respond, that there is no expectation that a new invitation to bid would result in additional bids, or that a rebid would not be in the best interest of the District or there is not adequate time for a re-solicitation. Otherwise, the bid may be rejected and:
 - i. A new invitation for bids solicited;
 - ii. The procurement canceled; or
 - iii. The procurement may be conducted as a sole source under Section 63G-6a-802 of the Act.
12. Multiple or Alternate Bids:
- a. Multiple or alternate bids will not be accepted from a bidder unless otherwise specifically required or allowed in the invitation for bids.

- b. If a bidder submits multiple or alternate bids that are not requested in the invitation for bids, the Procurement Official will only accept the bidder's first bid and will not accept any other bids constituting multiple or alternate bids.

13. Methods to Resolve Tie Bids:

- a. In accordance with Section 63G-6a-608 of the Act, in the event of tie bids, and only one for the tie bids was submitted by a Utah resident bidder, the contract shall be awarded to the Utah resident bidder, provided the bidder indicated in the bidder's response to the invitation to bid form that it is a Utah resident bidder.
- b. If a Utah resident bidder is not identified, the preferred method for resolving tie bids is for the Procurement Official to toss a coin in the presence of a minimum of three witnesses, with the firm first in alphabetical order being heads.
- c. Other methods to resolve a tie bid may be used as deemed appropriate by the Procurement Official.

14. Notice of Award:

- a. The District shall, on the day on which the award of a contract is announced, make available to each bidder and to the public a notice that includes:
 - i. The name of the bidder to which the contract is awarded and the price(s) of the procurement item(s); and
 - ii. The names and the prices of each bidder to which the contract is not awarded.

15. Multiple Stage Bidding Process: Multiple stage bidding may be conducted when deemed by the Procurement Official to be in the best interest of the District and as stated in the solicitation.

- a. The Procurement Official may hold a pre-bid conference as described in Subsection C.3 above to discuss the multiple stage bidding process or for any other permissible purpose.

D. Unpriced Offers: When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued under Section C above requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

- E. **Competitive Sealed Proposals:** The request for proposals (“RFP”) procurement process shall be conducted in accordance with the requirements of Part 7 of the Procurement Code and as provided below.

1. Content of the Request for Proposals:

- a. In addition to the requirements set forth under Section 63G-6a-703 of the Act, the request for proposals solicitation shall include:
 - i. A description of the format that offerors are to use when submitting a proposal, including any required forms; and
 - ii. Instructions for submitting price.
- b. The District is responsible for all content contained in the request for proposals solicitation documents, including:
 - i. Reviewing all schedules, dates, and timeframes;
 - ii. Approving content of attachments;
 - iii. Assuring that information contained in the solicitation documents is public information; and
 - iv. Understanding the scope of work and all evaluation criteria, requirements, factors, and formulas to be used in determining the scoring of proposals.

2. Multiple Stage RFP Process:

- a. An RFP may be conducted in stages to qualify offerors for subsequent stages or to narrow the number of offerors that will move on to subsequent stages. A multiple stage request for proposals solicitation will include:
 - i. A description of the stages and the criteria and scoring that will be used to evaluate proposals at each stage; and
 - ii. The methodology that may used to determine which proposals will be disqualified from additional stages.

3. Exceptions to Terms and Conditions Published in the RFP:

- a. Offerors requesting exceptions and/or additions to the standard terms and conditions published in the RFP must include the exceptions and/or additions with the proposal response.
- b. Exceptions and/or additions submitted after the date and time for receipt of proposals will not be considered unless there is only one offeror that responds to the RFP, the exceptions and/or additions have been approved by the District’s legal counsel, and it is determined by the Procurement Official that it is not beneficial to the District to republish the solicitation.

- c. Offerors may not submit requests for exceptions and/or additions by reference to a vendor's website or URL.
- d. The District may refuse to negotiate exceptions and/or additions:
 - i. That are determined to be excessive;
 - ii. That are inconsistent with similar contracts of the District;
 - iii. To warranties, insurance or indemnification provisions that are deemed, after consultation with the District's attorney, to be necessary to protect the District;
 - iv. Where the solicitation specifically prohibits exceptions and/or additions; or
 - v. That are not in the best interest of the District.
- e. If negotiations are permitted, the District may negotiate exceptions and/or additions with offerors, beginning in order with the offeror submitting the fewest exceptions and/or additions to the offeror submitting the greatest number of exceptions and/or additions. Contracts may become effective as negotiations are completed.
- f. If, in the negotiation of exceptions and/or additions with a particular offeror, an agreement is not reached, after a reasonable amount of time, as determined by the Procurement Official, the negotiations may be terminated, a contract will not be awarded to that offeror, and the District may move to the next eligible offeror.

4. Protected Records:

- a. The following are protected records, and may be redacted by the offeror subject to the procedures described below in accordance with the Governmental Records Access and Management Act (GRAMA) Title 63G, Chapter 2 of the Utah Code.
 - i. A trade secret, as defined in Section 13-24-2 of the Utah Code.
 - ii. Commercial information or non-individual financial information subject to the provisions of Section 63G-2-305(2) of GRAMA.
 - iii. Other Protected Records under GRAMA.
- b. Any person requesting that a record be protected shall include with the proposal or submitted document:
 - i. A written indication of which provisions of the proposal or submitted document are claimed to be considered for business confidentiality or to be protected (including trade secrets or other reasons for non-disclosure under GRAMA); and
 - ii. A concise statement of the reasons supporting each claimed provision of business confidentiality or other basis for protection.

5. Notification:

- a. A person who complies with Subsection 4 immediately above will be notified by the District prior to the public release of any information for which a claim of confidentiality has been asserted.
- b. Except as provided by court order, the District may not be compelled to disclose a record claimed to be protected under Subsection 4 immediately above but which the District or State Records Committee determines should be disclosed until the period in which to bring an appeal expires or the end of the appeal process, including judicial appeal, is reached. This Subsection 5 does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the State Records Committee. To the extent allowed by law, the parties to a dispute regarding the release of a record may agree in writing to an alternative dispute resolution process.
- c. Any allowed disclosure of public records submitted in the request for proposals process will be made only after the selection of the successful offeror(s) has been made public.

6. Process for Submitting Proposals with Protected Business Confidential Information:

- a. If an offeror submits a proposal that contains information claimed to be business confidential or protected information, the offeror must submit two separate proposals:
 - i. One redacted version for public release, with all protected business confidential information either blacked-out or removed, clearly marked as "Redacted Version"; and
 - ii. One non-redacted version for evaluation purposes clearly marked as "Protected Business Confidential".
- b. Pricing may not be classified as business confidential and will be considered to be public information.
- c. An entire proposal may not be designated as "PROTECTED", "CONFIDENTIAL" or "PROPRIETARY" and shall be considered to be non-responsive unless the offeror removes the designation.

7. Pre-proposal Conferences/Site Visits:

- a. Pre-proposal conferences/site visits may be conducted to explain the procurement requirements. If there is to be a pre-proposal conference or site visit, the time and place of the pre-proposal conference/site visit shall be stated in the RFP.

- b. Pre-proposal conference/site visits may be mandatory, but only if the RFP states that the pre-proposal conference/site visit is mandatory and provides the location, date and time of the site visit and also states that failure to attend a mandatory pre-proposal conference/site visit shall result in the disqualification of any offeror that does not attend.
- c. Attendance at a pre-proposal conference may be conducted via any of the following as determined by the Procurement Official:
 - i. Attendance in person;
 - ii. Teleconference participation;
 - iii. Webinar participation; or
 - iv. Other approved electronic media
- d. A site visit may generally only be attended in person provided, however, at the discretion of the Procurement Official, an audio or video recording of a site visit may be used.
- e. Attendance and participation at all pre-proposal conferences and site visits must be by an authorized representative of the offeror and as may be further specified in the RFP.
- f. The District will maintain an attendance log including the name of each attendee, the firm the attendee is representing, the attendee's contact information, and any documents distributed to the attendees; and the District may maintain minutes of the pre-proposal conference/site visit.
- g. The District may, as appropriate, publish as an addendum to the solicitation:
 - i. The attendance log;
 - ii. Minutes of the pre-proposal conference and any documents distributed to the attendees at the pre-proposal conference or site visit; or
 - iii. Any oral modification made to any of the solicitation documents, which shall be reduced to writing.

8. Addenda to Request for Proposals:

- a. Addenda to a Request for Proposals may be made for the purpose of making changes to:
 - i. The scope of work;
 - ii. The schedule;
 - iii. The qualification requirements;
 - iv. The criteria;
 - v. The weighting; or

- vi. Other requirements of the RFP.
 - b. Addenda shall be published within a reasonable time prior to the deadline that proposals are due, to allow prospective offerors to consider the addenda in preparing proposals. Publication at least 5 calendar days prior to the deadline that proposals are due shall be deemed a reasonable time. Minor addenda and urgent circumstances may justify a shorter period of time.
 - c. After the due date and time for submitting a response to a request for proposals, at the discretion of the Procurement Official, addenda to the request for proposals may be limited to offerors that have submitted proposals, provided the addenda does not make a substantial change to the RFP that, in the opinion of the Procurement Official, likely would have impacted the number of offerors responding to the original publication of the RFP.
9. Modification or Withdrawal of Proposal Prior to Deadline: A proposal may be modified or withdrawn prior to the established due date and time for responding.
10. Proposals and Modifications, Delivery and Time Requirements: To the extent that an error on the part of the District or an employee of the District results in a proposal or modification to a proposal not being received by the established due date and time, the proposal or modification to a proposal shall be accepted as being on time. Otherwise, the following shall apply:
- a. Proposals and modifications to a proposal submitted electronically or by physical delivery, after the established due date and time, will not be accepted for any reason, except as determined under d. below.
 - b. When submitting a proposal or modification to a proposal electronically, offerors must allow sufficient time to complete the online forms and upload documents. The solicitation will end at the closing time posted in the electronic system. If an offeror is in the process of uploading a proposal when the closing time arrives, the proposal or modification to a proposal will not be accepted.
 - c. When submitting a proposal or modification to a proposal by physical delivery (U.S. mail, courier service, hand-delivery, or other physical means) offerors are solely responsible for meeting the deadline. Delays caused by a delivery service or other physical means will not be considered as an acceptable reason for a proposal or modification to a proposal being late.
 - i. All proposals or modifications to proposals received by physical delivery will be date and time stamped by the District.

- d. To the extent that an error on the part of the District or an employee of the District results in a proposal or modification to a proposal not being received by the established due date and time, the proposal or modification to a proposal will be accepted as being on time.
11. Errors in Proposals: The following shall apply to the correction or withdrawal of an unintentionally erroneous proposal, or the cancellation of an award or contract that is based on an unintentionally erroneous proposal. A decision to permit the correction or withdrawal of a proposal or the cancellation of an award or a contract shall be supported in a written document, signed by the Procurement Official.
- a. Mistakes attributed to an offeror's error in judgment may not be corrected.
 - b. Unintentional errors not attributed to an offeror's error in judgment may be corrected if it is in the best interest of the District and correcting the error maintains the fair treatment of other offerors.
 - i. Examples include:
 - (1) Missing signatures,
 - (2) Missing acknowledgement of an addendum;
 - (3) Missing copies of professional licenses, bonds and insurance certificates, provided that copies are submitted by the deadline to correct the mistake established by the Procurement Official;
 - (4) Typographical errors;
 - (5) Mathematical errors not affecting the total proposed price; or
 - (6) Other errors deemed by the Procurement Official to be immaterial or inconsequential in nature.
 - c. Unintentional errors discovered after the award of a contract may only be corrected if, after consultation with the Procurement Official and the District's legal counsel, it is determined that the correction of the error does not violate the requirements of the Procurement Code or this Policy.
12. Evaluation of Proposals:
- a. The evaluation of proposals shall be conducted in accordance with Part 7 of the Procurement Code.
 - b. An evaluation committee consisting of at least three individuals may ask questions of offerors to clarify proposals, provided that the questions are submitted and answered in writing. The record of questions and answers shall be maintained in the file.

- c. The evaluation of cost in an RFP shall be based on the entire term of the contract, excluding renewal periods.
 - i. Unless an exception is authorized in writing by the Procurement Official, cost should not be artificially divided or evaluated on any other basis than the entire term of the contract, excluding renewal periods.
 - ii. Whenever practicable, the evaluation of cost should include maintenance and service agreements, system upgrades, apparatuses, and other components associated with the procurement item.

13. Correction or Withdrawal of Proposal:

- a. In the event an offeror submits a proposal that on its face appears to be impractical, unrealistic or otherwise in error, the Procurement Official may contact the offeror to:
 - i. Confirm the proposal;
 - ii. Permit a correction of an immaterial error in the proposal as provided in Section 63G-6a-114 of the Act;
 - iii. Request the offeror to clarify information in the proposal as provided in Section 63G-6a-115 of the Act; or
 - iv. Permit the withdrawal of the proposal.
- b. Offerors may not correct errors, deficiencies, or incomplete responses in a proposal that has been determined to be not responsible or not responsive, or that does not meet the mandatory minimum requirements stated in the request for proposals.

14. Interviews and Presentations:

- a. Interviews and presentations may be held as outlined in the RFP.
- b. Offerors invited to interviews or presentations shall be limited to those offerors meeting minimum requirements specified in the RFP.
- c. Representations made by the offeror during interviews or presentations shall become an addendum to the offeror's proposal and shall be documented. Representations must be consistent with the offeror's original proposal and may only be used for purposes of clarifying or filling in gaps in the offeror's proposal.
- d. The Procurement Official shall establish a date and time for the interviews or presentations and shall notify eligible offerors of the procedures. Interviews and presentations will be at the offeror's expense.

15. Best and Final Offers: Best and final offers (BAFO) shall be requested in accordance with Section 63G-6a-707.5 of the Act and this Policy.
- a. The BAFO process is an optional step in the evaluation phase of the request for proposals process in which offerors are requested or given an opportunity to modify their proposals. An evaluation committee may request best and final offers when:
 - i. No single proposal addresses all of the specifications;
 - ii. All of the proposals are unclear or deficient in one or more respects;
 - iii. All cost proposals exceed the identified budget or the District's available funding; or
 - iv. Two or more proposals receive an identical score and it is the highest score.
 - b. Only offerors meeting the minimum qualifications or scores described in the RFP are eligible to respond to a call for best and final offers.
 - c. Proposal modifications submitted in response to a request for best and final offers may only address the specific issues and/or sections of the RFP described in the request for best and final offers.
 - i. An offeror may not use the best and final offers process to correct other deficiencies in the offeror's proposal not called for in the request for best and final offers issued by the District.
 - d. When a request for best and final offers is issued to reduce cost proposals, offerors shall submit itemized cost proposals which clearly indicate the tasks or scope reductions that can be implemented to bring costs within the available budget.
 - i. The cost information of one offeror may not be disclosed to a competing offeror during the best and final offers process and such cost information shall not be shared with other offerors until after the contract has been awarded.
 - ii. The District shall ensure that auction tactics are not used in the discussion process, including discussing and comparing the costs and features of other proposals.
 - e. The best and final offers process is an optional step that may only be conducted during the evaluation phase of the RFP process and may not be conducted as part of the contract negotiation process.
 - f. The District will not use the best and final offers process to allow offerors a second opportunity to propose on the entire RFP.

- g. If a proposal modification is made orally during the interview or presentation process, the modification must be confirmed in writing.
- h. A request for best and final offers shall:
 - i. Comply with Section 63G-6a-707.5 of the Act;
 - ii. Include a deadline for submission that allows offerors a reasonable opportunity to prepare and submit their responses;
 - iii. Indicate how proposal modifications in response to a request for best and final offers will be evaluated;
- i. If an offeror does not submit a best and final offer, its immediate previous proposal will be considered as its best and final offer;
- j. Unsolicited best and final offers will not be accepted.

16. Cost-benefit Analysis Exception: CM/GC:

- a. A cost-benefit analysis is not required if the contract is awarded based solely on the qualifications of the construction manager/general contractor and the management fee described in Section 63G-6a-707(10) of the Act, provided:
 - i. A competitive process is maintained by the issuance of a request for proposals that requires the offeror to provide, at a minimum:
 - (1) A management plan;
 - (2) References;
 - (3) Statements of qualifications; and
 - (4) A management fee which contains only the following:
 - (i) Preconstruction phase services;
 - (ii) Monthly supervision fees for the construction phase; and
 - (iii) Overhead and profit for the construction phase.
- b. A cost-benefit analysis shall be based on the entire term of the contract, excluding any renewal periods, and may take life-cycle costs into consideration.
- c. The evaluation committee may, as described in the solicitation, weight and score the management fee as a fixed rate or a fixed percentage of the estimated contract value.
- d. The awarded contract must be in the best interest of the District.

17. Only One Proposal Received:

- a. If only one proposal is received in response to a request for proposals or only one vendor on an approved vendor list responds to an invitation to provide goods or services, the evaluation committee or Procurement Official may conduct a review to determine if:
 - i. The proposal meets the minimum requirements;
 - ii. Pricing and terms are reasonable; and
 - iii. The proposal is in the best interest of the District.
- b. If the evaluation committee or Procurement Official determines that the proposal meets the minimum requirements, pricing and terms are fair and reasonable, and the proposal is in the best interest of the District, the District may make an award.
- c. If a contract is awarded to the sole offeror, the Procurement Official shall maintain records that document why no more offers were received.
- d. If an award is not made, the District may either cancel the procurement or resolicit for the purpose of obtaining additional proposals.

18. Evaluation Committee Procedures for Scoring Criteria Other Than Cost:

- a. To prevent the evaluation committee from analyzing proposals that cannot be considered for award, either the evaluation committee, or the Procurement Official prior to distributing copies of proposals to the evaluation committee, may conduct an initial review of any applicable pass/fail minimum requirements or minimum score threshold set forth in the RFP to determine whether the proposals are responsive and responsible or are in violation of the Procurement Code or this Policy. Thresholds may be based on minimum scores for each evaluation category, the total of each minimum score for each evaluation category based on the total points available, or a combination the above. Thresholds may not be based on a natural base on scores that was not defined or stated in the RFP or on a predetermined number of offers, unless specifically authorized by the Procurement Official. The evaluation committee should not evaluate proposals deemed non-responsive or non-responsible or that have been disqualified for a violation of the Procurement Code or this Policy. Examples of pass/fail minimum requirements include:
 - i. Timeliness of receipt of the proposal;
 - ii. Qualifications;
 - iii. Certifications;
 - iv. Licensing;
 - v. Experience;
 - vi. Compliance with state or federal regulations;

- vii. Services provided;
 - viii. Product availability;
 - ix. Equipment; and
 - x. Other pass/fail minimum requirements set forth in the RFP.
- b. The evaluation and scoring of proposals in the RFP process shall be conducted in accordance with the following procedures:
 - i. Prior to the scoring of proposals, the Procurement Official will meet with the evaluation committee and any staff members who will have access to the proposals to:
 - (1) Explain the evaluation and scoring process to ensure that each committee member has a clear understanding of the scoring process and how points will be assigned;
 - (2) Discuss requirements regarding conflicts of interest, the appearance of impropriety, and the importance of confidentiality;
 - (3) Discuss the scoring sheet and evaluation criteria set forth in the RFP; and
 - (4) Provide a copy of relevant portions of this Policy to the evaluation committee and any staff members who will have access to the proposals.
 - ii. Once the proposals have been received and it is clear which offerors will be involved in the RFP process, each member of the evaluation committee may be asked to sign a written statement certifying that he/she does not have a conflict of interest, as set forth in Section 63G-6a-707 of the Act and in this Policy.
- c. Unless an exception is authorized by the Procurement Official, in order to avoid cost influencing the evaluation committee's scoring of non-price criteria, in accordance with Section 63G-6a-707 of the Act, costs may not be revealed to the evaluation committee until after the committee has finalized its scoring on all other technical non-price criteria stated in the RFP.
- d. After receipt of proposals, each committee member is expected to independently read and score each proposal based on the technical non-price criteria set forth in the RFP to assess the completeness, quality, and desirability of each proposal.
 - i. Proposals must be evaluated solely on the criteria stated in the RFP.
 - (1) Past performance ratings and references may be considered if listed as an evaluation criteria in the RFP.

- (2) Personal opinions based on prior experience with a procurement item or the offeror are not to be considered in scoring proposals, except as provided in the RFP.
 - (3) Personal favoritism for a vendor or bias against a vendor cannot be considered in scoring proposals, but a committee member may properly have a bias based upon the review of a proposal in comparison to the criteria stated in the RFP.
- ii. Evaluators are encouraged to request technical support from the Procurement Official when conducting their independent assessments and scoring.
- iii. After the proposals have been evaluated and scored by the individual committee members, the entire committee shall meet to discuss the proposals; if applicable, to conduct interviews; to resolve any factual disagreements; and to arrive at the final scoring. All committee members must be present in person or by electronic means to take any official action.
 - (1) If a committee member does not attend an evaluation committee meeting (including electronic attendance), the member may be removed from the evaluation committee and the remainder of the committee may take official action, provided there are at least three evaluation committee members remaining.
- iv. If there are mandatory minimum requirements, those offerors not meeting the requirements will be eliminated from further consideration.
- v. During committee discussions, each member may change his/her initial scoring. If additional information or clarification is needed from an offeror, the committee may, with approval by the Procurement Official, request information or clarification from an offeror. Such request will only be approved if it can be done in a manner that is fair to all offerors.
- vi. If, at any time during the evaluation process, the evaluation committee or the Procurement Official determines that no single proposal adequately addresses all of the specifications stated in the RFP, all proposals are unclear or deficient in one or more respects, cost proposals exceed the identified budget or the District's funding, or two or more proposals receive an identical evaluation score that is the highest score then, with the approval of the Procurement Official, best and final offers may be requested from responsible and responsive offerors and be evaluated in accordance with Section 63G-6a-707.5 of the Act and applicable portions of this Policy.

- vii. Each evaluation committee member shall turn in a completed scoring sheet, signed and dated by the evaluation committee member.
- e. The evaluation committee may tally the final scores for criteria other than cost to arrive at a consensus score by either of the following methods:
 - i. Total of all of the points given by individual committee members; or
 - ii. An average of the individual scores.
- f. The evaluation committee shall submit its final recommended scores for all criteria other than cost to the Procurement Official.
- g. The District shall follow the procedures set forth in Section 63G-6a-707 of the Act pertaining to the following:
 - i. Reviewing the evaluation committee's final recommended scores for each proposal for all criteria other than cost;
 - ii. Scoring cost based on the applicable scoring formula; and
 - iii. Calculating the total combined score for each responsive and responsible proposal.
- h. The evaluation committee and/or the Procurement Official shall prepare a cost justification statement for the committee recommendation and any applicable cost-benefit analysis.
 - i. The Procurement Official may replace any member on the evaluation committee or reconstitute the committee in any way deemed appropriate to cure an impropriety. If the impropriety cannot be cured by replacing a committee member, then a new evaluation committee may be appointed or the procurement may be cancelled.
- j. Nothing in this Policy shall preclude the Procurement Official from serving on an evaluation committee.

19. Criteria for Scoring Criteria Other Than Cost:

- a. Proposals apparently meeting the mandatory minimum requirements stated in an RFP will be scored on each, evaluation criteria, other than cost, based upon criteria stated in the RFP using a one through five point scoring system.
- b. Points shall be awarded to each applicable evaluation category as set forth in the RFP which may include:
 - i. Technical specifications;

- ii. Qualifications and experience;
- iii. Programming;
- iv. Design;
- v. Time, manner, or schedule of delivery;
- vi. Quality or suitability for a particular purpose;
- vii. Financial solvency;
- viii. Management and methodological plan; and
- ix. Other requirements specified in the RFP.

c. Scoring Methodology:

- i. Five points (Excellent): The proposal addresses and exceeds all of the requirements described in the RFP.
- ii. Four points (Very Good): The proposal addresses all of the requirements described in the RFP and, in some respects, exceeds them.
- iii. Three points (Good): The proposal addresses all of the requirements described in the RFP in a satisfactory manner.
- iv. Two points (Fair): The proposal addresses the requirements described in the RFP in an unsatisfactory manner.
- v. One point (Poor): The proposal fails to address the requirements described in the RFP or addresses the requirements inaccurately or poorly.

20. Minimum Score Thresholds: The District may establish minimum score thresholds for any RFP procurement to advance proposals from one stage in the RFP process to the next, including contract award.

- a. If minimum score thresholds are established for a procurement, the RFP must clearly describe the minimum score threshold that proposals must achieve in order to advance to the next stage in the RFP process or to be awarded a contract.
- b. Minimum score thresholds may be based on:
 - i. Minimum scores for each evaluation category;
 - ii. The total of each minimum score in each evaluation category based on total points available; or
 - iii. A combination of (i) and (ii).
- c. Minimum score thresholds may not be based on:
 - i. A natural break in scores that was not defined and set forth in the RFP; or
 - ii. A predetermined number of offerors.

21. Evaluation Committee Members Required to Exercise Independent Judgment:

- a. Evaluation committee members are expected to exercise independent judgment in a manner that is not dependent on anyone else's opinion or desires. As such, committee members must not allow their scoring to inappropriately be influenced by another person's wishes that additional or fewer points be awarded to a particular offeror.
- b. Evaluators may seek to increase their knowledge before scoring by asking questions and seeking appropriate information from the Procurement Official. Otherwise, evaluators should not discuss proposals or the scoring of proposals with other persons who are not on the evaluation committee.
- c. The exercise of independent judgment applies not only to possible inappropriate influences from outside the evaluation committee, but also to inappropriate influences from within the committee. It is acceptable for there to be discussion and debate within the committee regarding how well a proposal meets the evaluation criteria. However, open discussion and debate may not be allowed to lead to coercion or intimidation on the part of one committee member in an attempt to influence the scoring of another committee member.
 - i. Evaluators may not act on their own or in concert with another evaluation committee member to inappropriately steer an award to a favored vendor or to disfavor a particular vendor.
- d. Evaluators are required to report to the Procurement Official any attempt by another committee member to improperly influence the scoring to favor or disfavor a particular offeror.
- e. If an evaluator feels that his/her independence has been compromised, that person must recuse himself/herself from the evaluation process.

22. Professional Services:

- a. A contract with a consultant providing professional or technical services, such as accounting and legal services, may be awarded using the RFP procedure or as a small purchase under Part V of this Policy. The award of a contract for engineering, architectural, master planning and programming or commercial interior design services is governed by Part XV of this Policy.
- b. Subject to Section IV.A. of this Policy, contracts with consultants providing professional or technical services, such as accounting, legal and design professional services, may be extended from year-to-year in the discretion of the Procurement Official in accordance with Section 63G-6a-1204(7) of the Act.

23. Publicizing Awards:

- a. The following shall be disclosed after receipt of a GRAMA request and payment of any lawfully enacted and applicable fees:
 - i. The contract(s) entered into as a result of the selection and the successful proposal(s), except for those portions that are to be non-disclosed under Subsection E.4 above;
 - ii. The unsuccessful proposals, except for those portions that are not to be disclosed;
 - iii. The rankings of the proposals;
 - iv. The names of the members of any evaluation committee;
 - v. The final total or average scores used by the evaluation committee to make the selection (in no event will the names of the individual scorers be associated with their individual scores or rankings); and
 - vi. The written justification statement supporting the selection, except for those portions that are not to be disclosed.
 - b. The following may impair the District's procurement proceedings or give an unfair advantage to a person proposing to enter into a contract or agreement with the District, and may not be disclosed by the District to the public, including under a GRAMA request:
 - i. The names of individual scorers/evaluators in relation to their individual scores or rankings;
 - ii. Any individual scorer's/evaluator's notes, drafts, or working documents;
 - iii. Non-public financial statements; and
 - iv. Past performance and reference information, which is not provided by the offeror and which is obtained as a result of the efforts of the District. To the extent such past performance or reference information is included in the written justification statement; it is subject to public disclosure.
24. Timing of Rejection: The District may, at any time during the RFP process, reject a proposal based on a determination that the submitter of the proposal is not responsible or the proposal is not responsive. As such, the evaluation committee may make a determination that a proposal is not responsive or an offeror is not responsible at any time even if the proposal initially passed the pass/fail review mentioned in Section VIII.E.18.a.
25. Public-Private Partnerships: The District shall award a contract for a public-private partnership, as defined 63G-6a-103 of the Act, using the request for proposals standard procurement process as set forth in Part 7 of the Act.

F. Annual Renewals of Purchase Contracts: Subject to the Act, unless the District has an approved contract with a longer term than one year or it is desirable to extend or continue purchases from the same source as allowed under Subsection X.A.1., A.2. or A.3., the purchase of supplies, materials and equipment on a monthly or other recurring basis is to

be the subject of an annual bid, proposal or competitive quotation procedure, as determined to be appropriate by the Procurement Official.

G. Conformity to Solicitation Requirements:

1. Rejection:

- a. Any bid or offer that fails to conform to the essential requirements of the solicitation shall be rejected.
- b. Any bid or offer that does not conform to the applicable specifications shall be rejected unless the solicitation authorized the submission of alternate bids or offers and the procurement item(s) offered as alternates meet the requirements specified in the solicitation.
- c. Any bid or offer that fails to conform to the delivery schedule or permissible alternates stated in the solicitation shall be rejected.

2. Conditions or Exceptions: A bid or offer shall be rejected when the bidder or offeror imposes conditions or takes exceptions that would modify requirements or terms and conditions of the solicitation or limit the bidder or offeror's liability to the District, since to allow the bidder or offeror to impose such conditions or take exceptions would be prejudicial to other bidders or offerors. For example, bids or offers shall be rejected in which the bidder or offeror:

- a. For commodities, protects against future changes in conditions, such as increased costs, if total possible costs to the District cannot be determined;
- b. Fails to state a price and indicates that price will be the price in effect at time of delivery or states a price but qualifies it as being subject to the price in effect at the time of delivery;
- c. When not authorized by the solicitation, conditions or qualifies a bid by stipulating that it is to be considered only if, before the date of award, the bidder or offeror receives (or does not receive) an award under a separate solicitation;
- d. Requires that the District is to determine that the bidder's or offeror's product meets applicable specifications; or
- e. Limits any right of the District under any contract clause.

3. Deletion: A bidder or offeror may be requested to delete objectionable conditions from a bid or offer, provided doing so is not prejudicial to other bidders or offerors, or the conditions do not go to the substance, as distinguished from the form, of the bid or proposal. A condition goes to the substance of a bid or offer when it affects price, quantity, quality, or delivery of the offered procurement item(s).