

1 **R277. Education, Administration.**

2 **R277-122. Board of Education Procurement.**

3 **R277-122-1. Authority and Purpose.**

4 (1) This rule is authorized by:

5 (a) Utah Constitution Article X, Section 3, which vests general control and
6 supervision over public education in the Board;

7 (b) Section 53A-1-401, which allows the Board to make rules to execute the Board's
8 duties and responsibilities under the Utah Constitution and state law; and

9 (c) Title 63G, Chapter 6a, Utah Procurement Code.

10 (2) The purpose of this rule is to adopt and incorporate by reference Title R33,
11 Purchasing and General Services, with exceptions as described in this rule.

12 **R277-122-2. Definitions.**

13 ~~[(1) "Manager of procurement" means a Board employee designated by the Board
14 to be the head of the procurement unit as described in Section R277-122-4 and Section
15 R33-1-3.]~~

16 (1) "Professional service provider" means a provider of a professional service as
17 defined in Subsection 63G-6a-103(61) and includes an expert in educational instruction
18 and teaching.

19 (2) "Responsible" means the same as that term is defined in Subsection
20 63G-6a-103 (75).

21 (3) "Responsive" means the same as that term is defined in Subsection 63G-6a-103
22 (76).

23 **R277-122-3. Incorporation of Title R33 With Exceptions.**

24 (1) The Board adopts and incorporates by reference Title R33, Purchasing and
25 General Services, as in effect on April 1, 2017, with the exceptions described in this
26 section.

27 (2) The Board does not adopt Section R33-8-101b.

28 (3) The Board adopts Section R277-122-5 in place of Section R33-9-103.

- 29 (4) The Board adopts Section R277-122-6 in place of Section R33-12-201.
30 (5) The Board adopts Section R277-122-8 in place of Section R33-12-608.
31 (6) The Board adopts Section R277-122-9 in place of Subsections:
32 (a) R33-16-101a (2)(a); and
33 (b) R33-16-301 (4).
34 (7) The Board adopts Section R277-122-10 in place of Sections R33-5-104 and
35 R33-5-107.
36 (8) The Board adopts Section R277-122-11 in place of Section R33-5-108.

37 **R277-122-4. Head of the Procurement Unit Designated.**

38 The Board designates the ~~[manager of procurement]~~ Board's Director of Purchasing
39 as the head of the procurement unit.

40 **R277-122-5. Cancellation Before Award.**

- 41 (1) A solicitation may be cancelled prior to a contract award if the head of the
42 procurement unit determines the cancellation is:
43 (a) in the best interest of the Board; and
44 (b) supported by a reasonable and good faith justification.
45 (2) The head of the procurement unit shall include notice of the Board's right of
46 cancellation described in Subsection (1) in each Board solicitation.

47 **R277-122-6. Establishment of Terms and Conditions.**

48 The head of the procurement unit shall develop standard terms and conditions for
49 use with Board contracts and agreements.

50 **R277-122-7. Requirements for Cost or Pricing Data.**

- 51 (1) If cost or pricing data is required by Section 63G-6a-1206 or Section
52 R33-12-601, the head of the procurement unit shall require the person who seeks a
53 cost-based contract to submit:
54 (a) factual and verifiable information related to the contractor's estimated cost for

55 completing a project on:

56 (i) the date the contract is signed by both parties; or

57 (ii) an earlier date agreed to by both parties that is:

58 (A) as close as practicable to the date described in Subsection (1)(a)(i); and

59 (B) before prudent buyers and sellers would reasonably expect price negotiations
60 to be affected significantly; and

61 (b) underlying data related to a contractor's estimate that can be reasonably
62 expected to contribute to the soundness of estimates of future costs and the validity of
63 determinations of costs already incurred, including:

64 (i) vendor quotations;

65 (ii) nonrecurring costs;

66 (iii) information on changes in production methods and in production or purchasing
67 volume;

68 (iv) data supporting projections of business prospects and objectives and related
69 operations costs;

70 (v) unit-cost trends such as those associated with labor efficiency;

71 (vi) make-or-buy decisions;

72 (vii) estimated resources to attain business goals; or

73 (viii) information on management decisions that could have a significant bearing on
74 costs.

75 (2) Submission of certified cost or pricing data applies to contracts of \$50,000.00
76 or greater if the contract price is not established by:

77 (a) adequate price competition;

78 (b) established catalogue or market prices; or

79 (c) law or regulation.

80 **R277-122-8. Use of Federal Cost Principles.**

81 The head of the procurement unit shall apply the federal cost principles described
82 in 2 CFR Part 200, Subpart E in determining which costs expended under Board contracts
83 are reasonable, allocable, and allowable.

84 **R277-122-9. Grounds for Protest - Intervention in a Protest.**

85 (1) A bidder who files a protest shall include in the bidder's submission a concise
86 statement of the grounds for the protest, which shall include the facts leading the protestor
87 to contend that a grievance has occurred, including but not limited to specifically
88 referencing:

89 (a) the circumstances described in Subsections R33-16-101a(2)(a) (i) through (iii);

90 (b) a provision of the solicitation alleged to be:

91 (i) unduly restrictive;

92 (ii) anticompetitive; or

93 (iii) unlawful;

94 (c) an alleged material error made by the evaluation committee or conducting
95 procurement unit; or

96 (d) the circumstances described in Subsections R33-16-101a(2)(a)(vi) and (vii).

97 (2) A motion to intervene in a post-award protest may only be made by the
98 announced awardee.

99 (3) A person may intervene in a pre-award protest, if the person's proposal:

100 (a) was evaluated;

101 (b) found to be responsive; and

102 (c) the head of the procurement unit finds the person to be responsible.

103 **R277-122-10. Small Purchases of Procurement Items Other than Professional**
104 **Services and Consultants.**

105 (1) The Superintendent shall make small purchases in accordance with the
106 requirements set forth in Section 63G-6a-506 and this Section R277-122-10.

107 (2) Unless otherwise required as part of another standard procurement process
108 being used in conjunction with a small purchase, the Superintendent need not utilize a
109 solicitation or provide public notice to conduct a small purchase.

110 (3) The Superintendent may make a small purchase of a procurement item other
111 than a professional service by:

112 (a) direct award without seeking competitive bids or quotes up to the following

113 threshold amounts:

114 (i) \$3,500 for one or more procurement items purchased at the same time from one
115 source; and

116 (ii) \$50,000 for multiple procurement items purchased in a 12-month period from
117 one source; and

118 (b) subject to Rule R33-4-109, ~~seeking competitive~~obtaining quotes from a
119 minimum of two vendors and purchasing the procurement item from the responsible
120 vendor offering the lowest quote for a purchase of up to \$50,000 for one or more
121 procurement items purchased at the same time from a single source.

122 (4) When conducting a purchase under Subsection (3)(b) in conjunction with an
123 approved vendor list, the Superintendent:

124 (a)(i) may obtain quotes from all the vendors on the approved vendor list; or

125 (ii) may obtain quotes from a minimum of two vendors on the approved vendor list,
126 using one or more of the following methods to select vendors from whom to obtain quotes:

127 (A) a rotation system, organized alphabetically, numerically, or randomly;

128 (B) the geographic area serviced by each vendor;

129 (C) each vendor's particular expertise or field;

130 (D) solicitation of an additional quote from the vendor that provided the lowest quote
131 on the most recently completed procurement conducted by the Board using the approved
132 vendor list; or

133 (E) another method approved by the head of the procurement unit;

134 (b) shall document that all vendors on the approved vendor list have a fair and
135 equitable opportunity to obtain a contract; and

136 (c) shall purchase the procurement item from the responsible vendor on the
137 approved list offering the lowest quote.

138 (5) Whenever practicable, the Superintendent shall use a rotation system or other
139 system designed to allow for competition when using a small purchase process.

140 (6) In the process of obtaining a competitive quote, the Superintendent shall record
141 and maintain the following as a government record:

142 (a) the names of the vendors from whom quotes were requested and received; and

- 143 (b) the date of receipt and amount of each quote.
144 (7) The Superintendent shall comply with all applicable laws and rules in the conduct
145 of small purchases, including:
146 (a) Subsection 63G-6a-506(8);
147 (b) Title 63G, Chapter 6a, Part 24, Unlawful Conduct and Penalties; and
148 (c) Sections R33-24-104 through R33-24-106.

149 **R277-122-11. Small Purchases of Professional Service Providers and Consultants.**

150 (1) The Superintendent shall make small purchases of professional services in
151 accordance with the requirements set forth in Section 63G-6a-506 and this Section R277-
152 122-11.

153 (2) Unless otherwise required as part of another standard procurement process
154 being used in conjunction with a small purchase, the Superintendent need not utilize a
155 solicitation or provide public notice to conduct a small purchase of professional services.

156 (3) The Superintendent may procure professional services:

157 (a) up to a maximum of \$3,500 by direct negotiation with any professional services
158 provider or consultant determined in writing by the Superintendent to be qualified to provide
159 the professional service; and

160 (b) up to a maximum of \$100,000 by:

161 (i) subject to Rule R33-4-109, obtaining quotes from a minimum of three
162 professional services providers or consultants determined in writing by the Superintendent
163 to be qualified to provide the professional services; and

164 (ii) making the purchase from the professional service provider or consultant
165 determined in writing by the Superintendent to provide the Board with the best value,
166 comparing qualifications and price.

167 (4) The Superintendent shall comply with all applicable laws and rules in the conduct
168 of small purchases for professional services, including:

169 (a) Subsection 63G-6a-506(8);

170 (b) Title 63G, Chapter 6a, Part 24, Unlawful Conduct and Penalties; and

171 (c) Sections R33-24-104 through R33-24-106.

172 **KEY: procurement, efficiency**

173 **Date of Enactment or Last Substantive Amendment: ~~[July 10, 2017]~~2018**

174 **Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53A-1-401; 63G,**

175 **Chapter 6a**