



UTAH STATE BOARD OF EDUCATION

Martell Menlove, Chief Executive Officer
Lorraine Austin, Board Secretary

Tami W. Pyfer, Chair

David L. Crandall, First Vice Chair
David L. Thomas, Second Vice Chair

Dixie L. Allen
Kim R. Birmingham
Keith M. Buswell
Leslie B. Castle

Barbara W. Corry
Dan Griffiths
Heather Groom
Michael G. Jensen

Jennifer A. Johnson
Jefferson Moss
C. Mark Openshaw
Debra G. Roberts

MEMORANDUM

TO: Members, Utah State Board of Education

FROM: Martell Menlove, Ph.D.
Chief Executive Officer

DATE: January 9, 2014

ACTION: R277-117 *Utah State Board of Education Protected Documents*
(Continuation and Amended)

Background:

1. R277-117 *Utah State Board of Education Protected Documents* is due for a five-year review and continuation consistent with the Utah Administrative Rulemaking Act. The rule must be approved for continuation by the Board or it will expire. Staff has reviewed R277-117 and determined that the rule continues to be necessary.
2. R277-117 *Utah State Board of Education Protected Documents* is amended to include language protecting records under the Utah Government Records Access and Management Act (GRAMA).

Key Points:

1. R277-117 continues to be necessary because it provides Board procedures to protect the integrity of proposals or bidding process in order to provide fair and equal opportunities for vendors and service providers.
2. Language is added regarding protected records under GRAMA.

Anticipated Action:

1. It is proposed that the Law and Licensing Committee consider approving R277-117 for continuation on first reading, and if approved by the Committee, the Board consider approving R277-117 for continuation on second reading.
2. It is proposed that the Law and Licensing Committee consider approving R277-117, as amended, on first reading, and if approved by the Committee, the Board consider approving R277-117, as amended, on second reading.

Contact: Brenda Hales, 801-538-7515
Carol Lear, 801-538-7835

1 **R277. Education, Administration.**

2 **R277-117. Utah State Board of Education Protected Documents.**

3 **R277-117-1. Definitions.**

4 A. "Board" means the Utah State Board of Education.

5 B. "Request for proposal or RFP" means an official
6 application or offer for services provided to the Board/USOE
7 in response to an advertised opportunity to provide goods or
8 services.

9 C. "RFP-like document" means a grant application or a
10 proposal of any kind offered in response to a Board request
11 for applicants to provide goods or services to public
12 education.

13 D. "USOE" means the Utah State Office of Education.

14 **R277-117-2. Authority and Purpose.**

15 A. This rule is authorized by Utah Constitution Article
16 X, Section 3 which vests general control and authority over
17 public education in the Board, by Section 53A-1-402(1)(c)(iii)
18 which requires the Board to set minimum standards for
19 alternative and pilot programs, Section 53A-1-402(1)(c)(iv)
20 which requires the Board to set minimum standards for
21 curriculum and instruction requirements, Section 53A-1-
22 402(1)(e)(i) which requires the Board to set minimum standards
23 for school productivity and cost effectiveness measures,
24 Section 63G-2-305(6) which allows the Board to protect records
25 if the disclosure would impair government procurement
26 proceedings or give an unfair advantage to any person
27 proposing to enter into a contract or agreement with a
28 governmental entity consistent with other provisions of
29 Section 63G-2-305 and Section 63G-2-309, and by Section 53A-1-
30 401(3) which allows the Board to adopt rules in accordance
31 with its responsibilities.

32 B. The purposes of this rule:

33 (1) is to maintain fairness, objectivity, efficiency and

34 timeliness, as the Board fulfills constitutional and statutory
35 directives to and responsibilities for Utah public schools and
36 public school programs.

37 (2) to protect the integrity of proposal or bidding
38 processes in order to provide fair and equal opportunities for
39 vendors and service providers.

40 **R277-117-3. Board Procedures in Preparing and Releasing RFP**
41 **and RFP-like Proposals or Grants.**

42 A. The Board or USOE staff acting for the Board shall act
43 consistent with Section 63G-6-101 et seq. in advertising and
44 soliciting services for Utah public schools unless the Board
45 is specifically exempt from the procurement process in which
46 case the Board shall continue to protect the integrity of a
47 competitive process with the provisions of this rule.

48 B. The Board shall develop RFPs or RFP-like requests
49 using the plain language of state statute(s) or federal
50 regulation(s) that directs the Board to seek competitive or
51 non-competitive applications or proposals for services that
52 are funded through a public education appropriation to the
53 Board.

54 C. The USOE, acting for the Board, shall use legislative
55 intent to develop RFPs or RFP-like requests only when
56 legislative intent is specifically written in state law, is
57 passed by the State Legislature and is specific to the RFP in
58 development.

59 D. The Board may request written information from
60 legislators or legislative staff to explain the intent of
61 individual bill sponsors; all written information received
62 under [~~this section~~]R277-117-3 shall be public information.

63 E. Board members or USOE staff may seek at the Board's
64 or staff's sole discretion, additional information and
65 expertise to facilitate the development of an RFP. All
66 information gathered under this provision shall be public

67 information, including the source of the information, unless
68 the records are specifically protected under Section 63G-2-
69 305(17).

70 F. The Board may allow for public comment at Board
71 meetings or Board committee meetings to discuss the
72 legislative intent for RFPs.

73 **R277-117-4. Confidentiality of RFP and RFP-like Proposals or**
74 **Grants Prior to Release by the USOE.**

75 A. The RFP or RFP-like proposal shall be a protected
76 document under Section 63G-2-305(22) until the proposal is
77 released by the USOE or a commercial distributor of an RFP
78 specifically commissioned by the USOE.

79 B. USOE staff shall stamp or mark all draft RFP documents
80 DRAFT until the final version of an RFP or RFP-like document
81 is officially released for public review and response.

82 C. If an RFP process for which the Board is responsible
83 is compromised, as determined by a vote of the Board if
84 necessary, the proposal shall be void and the USOE shall begin
85 a new RFP process.

86 D. A USOE employee who intentionally violates the
87 provisions of this rule may be subject to employment
88 discipline up to and including termination.

89 **KEY: RFPs, grants, confidentiality**

90 **Date of Enactment or Last Substantive Amendment: [~~February 24,~~**
91 **~~2009]2014~~**

92 **Notice of Continuation: 2014**

93 **Authorizing, and Implemented or Interpreted Law:**

94 **53A-1-402 (1) (c) (iii) ; 53A-1-402 (1) (c) (iv) ; 53A-1-402 (1) (e) (i) ;**

95 **53A-1-401 (3)**