

# Procurement: General Procurement Policies - CBA

## **Standard Procurement Processes**

Except as stated in the following paragraph, procurements by the District must be conducted using a “standard procurement process.” The standard procurement processes are (1) bidding, as described in Policies CBB and CBC; (2) requests for proposals, as described in Policy CBD; and (3) small purchases, as described in Policy CBE.

*Utah Code § 63G-6a-103(45) (2013)*

## **Exceptions to Standard Procurement Processes**

The only other permissible procurement methods apart from the standard procurement processes are procurements under the following District policies: Sole Source Procurement (Policy CBFA), Emergency Procurement (Policy CBFB), Prison Industry Goods Procurement (Policy CBFC), and Community Rehabilitation Program Procurement (Policy CBFD).

*Utah Code § 63G-6a-802 (2013); § 63G-6a-803 (2012); § 63G-6a-804 (2013); § 63G-6a-805 (2013)*

## **Request for Information**

A “request for information” is a nonbinding process where the District requests information relating to a procurement item. The purpose of a request for information is to obtain information, comments, or suggestions from potential bidders or offerors before issuing an invitation for bids or request for proposals, to determine whether to invite bids or request proposals; and to generate interest in a possible invitation for bids or a request for proposals. The District may use a request for information to prepare invite bids or request proposals for an unfamiliar or complex procurement, to determine the availability of a procurement item, or to determine best practices, industry standards, performance standards, product specifications, and innovations relating to a procurement item.

*Utah Code § 63G-6a-103(37) (2013); § 63G-6a-502 (2012)*

A request for information may seek a wide range of information, including for example information on availability of a procurement item, delivery schedules, industry standards and practices, product specifications, training, new technologies, capabilities of potential providers of a procurement item, and alternate solutions.

*Utah Code § 63G-6a-504 (2012)*

A request for information is not a procurement process and may not be used to make a purchase or enter into a contract. Similarly, a response to a request for information is not an offer and may not be accepted to form a binding contract. Information submitted to the District by others or by the District to others in connection with a request for information is considered “protected” information under the Utah Government Records Access and Management Act and Policy GA.

*Utah Code § 63G-6a-503; 63G-6a-505 (2013)*

## **Procurement Notice Requirements**

Before issuing an invitation for bids or a request for proposals, the District shall publish a notice of such action which:

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1. Names the District as the entity conducting the procurement;
2. Provides information about how to contact the District in relation to the invitation for bids or request for proposals;
3. States the date of the opening and closing of the invitation for bids or request for proposals;
4. Provides information on how to obtain a copy of the invitation for bids or request for proposals; and
5. Includes a general description of the procurement items that will be obtained by the District.

The notice shall be published in one or more of the following ways:

1. In a newspaper of general circulation in the state, at least seven days before the deadline for submitting a bid or a proposal;
2. In a newspaper of general circulation within the District, at least seven days before the deadline for submitting a bid or a proposal;
3. On the District's main web site, for at least seven consecutive days before the deadline for submitting a bid or proposal; or
3. On a state web site that is owned, managed by, or provided under contract with, the Utah Division of Purchasing and General Services for posting a public procurement notice.

The seven day periods for notice may be reduced if the District Procurement Officer or his or her designee signs a written statement that a shorter time is needed and that it has been determined that competition from multiple sources may be obtained within that shorter time period.

The District shall also make a copy of an invitation for bids or a request for proposals available for public inspection at the main District office or on the website of the District or of the Division of Purchasing and General Services.

*Utah Code § 63G-6a-406 (2013)*

### **Cancellation and Rejection of Bids and Proposals**

Subject to any regulations issued by the Procurement Policy Board, when it is in the best interests of the District to do so, the District may cancel an invitation for bids, a request for proposals, or other solicitation or reject any or all bids or proposal responses, in whole or in part, as may be specified in the solicitation. When the District takes such an action, the reasons for the cancellation or rejection shall be made a part of the contract file.

*Utah Code § 63G-6a-902 (2013)*

### **Vendor Qualification**

*Prequalified vendor list*

A "vendor" is a bidder, an offeror, or a contractor, including an architect or an engineer. The District may prequalify potential vendors to provide any type of procurement item specified by the District and thereafter limit participation in an invitation for bids, a

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request for proposals, or an approved vendor list to the prequalified potential vendors for the specified type of procurement item.

To prequalify potential vendors to provide a specified type of procurement item, the District shall issue a request for qualifications. This request shall be published according to the notice requirements set forth above and shall state: (1) the type of procurement item to which the request for qualifications relates, (2) the scope of work to be performed, (3) the instructions and the deadline for providing information in response to the request for qualifications, (4) the minimum criteria for prequalification, (5) the period of time during which the list of prequalified potential vendors will remain in effect, and (6) that during the time the list is in effect the District may limit participation in an invitation for bids or a request for proposals to the potential vendors that are prequalified to provide the specified type of procurement item.

The time period that the list may remain in effect may not be longer than 18 months after the list is made available to the public as provided for below. The minimum criteria for prequalification shall include the prequalification requirements unique to the procurement, may include performance rating criteria; and may not be so restrictive that the criteria unreasonably limit competition. Before making the final list of prequalified vendors, the District may request additional information to clarify responses made to the request for qualifications.

A potential vendor shall be included on the list of prequalified potential vendors if the vendor submits a timely, responsive response to the request for qualifications; and meets the minimum criteria for qualification. If a request for qualifications will result in only one vendor being placed on the list of prequalified potential vendors, then the District shall cancel the request for qualifications and the list may not be used.

Before making the list of prequalified potential vendors available to the public, the District shall provide to each potential vendor who provided information in response to the request, but who did not meet the minimum qualifications, a written statement describing why the potential vendor did not meet the criteria for inclusion on the list. Within 30 days after the deadline for responding to the request for qualifications, the District shall make the list of prequalified potential vendors available to the public.

*Utah Code § 63G-6a-403 (2013)*

### *Approved vendor list*

The District may use timely, responsive responses to requests for qualification or the statements of qualifications submitted by architects or engineers as provided for in Policy CCF to compile a list of approved vendors from which procurement items may be obtained. In order to ensure equal treatment of vendors on an approved vendor list, for services other than construction projects, the District shall use one of the following methods in an unbiased manner (1) a rotation system, organized alphabetically, numerically, or randomly, (2) assigning vendors to a specified geographical area, or (3)

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classifying each vendor based on each vendor's particular expertise, qualifications, or field.

An approved vendor list may not be used for construction projects, which exceed the amount established by the Procurement Policy Board. For construction projects costing less than the limit established by the Procurement Policy Board, the District shall select a potential construction contractor from an approved potential contractor list, using an invitation for bids or a request for proposals. After selecting a potential contractor, the District shall enter into fee negotiations with the potential contractor. If, after good faith negotiations, the District and the potential contractor are unable to negotiate a mutually acceptable fee, the District shall select another contractor and enter into fee negotiations with that potential contractor. For architectural or engineering services for these construction projects, the District shall select a potential contractor from an approved potential contractor list using one of the following methods: (1) using a rotation system, organized alphabetically, numerically, or randomly, (2) assigning a potential contractor to a specified geographical area, or (3) classifying each potential contractor based on the potential contractor's field or area of expertise.

*Utah Code § 63G-6a-404 (2013)*

### *Determination of non-responsibility*

“Responsible” means that a bidder or offeror both (1) is capable, in all respects, to fully perform the contract requirements solicited in an invitation for bids or a request for proposals; and (2) has the integrity and reliability to ensure good faith performance.

*Utah Code § 63G-6a-103(40) (2013)*

If the District determines that a bidder or offeror is not responsible, that determination shall be made in writing in accordance with rules issued by the Procurement Policy Board. It may be grounds for a finding of non-responsibility if a bidder or offeror unreasonably fails to promptly supply information in connection with an inquiry with respect to responsibility. Subject to the Utah Government Records Access and Management Act and Policy GA, information furnished by a bidder or offeror in connection with a responsibility inquiry may not be disclosed outside of the District without prior written consent by the bidder or offeror.

*Utah Code § 63G-6a-903 (2013)*

### *Debarment*

The Board of Education or its designee or the district Procurement Officer may, after reasonable notice to the person involved and a reasonable opportunity for that person to be heard, either debar a person for cause from consideration for award of contracts for up to three years or suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity that might lead to debarment.

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A suspension may not be for more than three months unless an indictment has been issued for an offense, which would cause debarment, in which case the suspension shall remain in effect until after the trial of the suspended person.

Causes for debarment include:

1. Conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of a public or private contract or subcontract;
2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a contractor;
3. Conviction under state or federal antitrust statutes;
4. Failure without good cause to perform in accordance with the terms of the contract;
5. A violation of the Procurement Code or the District's procurement policies; or
6. Any other cause that the Board of Education or its designee or the district Procurement Officer determines to be so serious and compelling as to affect responsibility as a contractor, including debarment by another governmental entity.

*Utah Code § 63G-6a-904 (2013)*

### *Ineligible bidder or offeror*

A person with an outstanding tax lien in the state may not submit a quote, bid, or offer to the District, nor may such a person contract to provide a procurement item to the District. However, if the district Procurement Officer determines that it is in the best interests of the District to do so, the District may grant an exception to this prohibition for a specified and particular quote, bid, offer, or contract. The District may reject a quote, bid, or offer submitted in violation of this prohibition.

*Utah Code § 63G-6a-905 (2013)*

## **Preferences**

### *Preference for providers of Utah products*

The District shall, for all procurements, give a reciprocal preference to those bidders offering procurement items that are produced, manufactured, mined, grown, or performed in Utah ("Utah items") over those bidders offering procurement items that are produced, manufactured, mined, grown, or performed in any state that gives or requires a preference to procurement items that are produced, manufactured, mined, grown, or performed in that state ("out of state preferred items"). The amount of reciprocal preference shall be equal to the amount of the preference applied by the other state for that particular procurement item. In order to receive a reciprocal preference under this section, the bidder must certify on the bid that the procurement items offered are Utah items. Without that certification on the bid, the reciprocal preference is waived.

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If the bidder submitting the lowest responsive and responsible bid offers out of state preferred items, and if another bidder has submitted a responsive and responsible bid offering Utah items, and with the benefit of the reciprocal preference, the bid of the other bidder is equal to or less than the original lowest bid, the District shall (1) notify the Utah items bidder that the bidder qualifies as a preferred bidder; and (2) make the purchase from the preferred bidder if the bidder agrees, in writing, to meet the low bid within 72 hours after the notice. The District shall include the exact price submitted by the lowest bidder in its notice to the preferred bidder. The District may not enter into a contract with any other bidder for the purchase until 72 hours have elapsed after notice to the preferred bidder. If there is more than one preferred bidder, the District shall award the contract to the willing preferred bidder who was the lowest preferred bidder originally. If there were two or more equally low preferred bidders, the District shall comply with the rules of the Procurement Policy Board to determine which bidder should be awarded the contract.

This section does not apply if application of the section might jeopardize the receipt of federal funds.

*Utah Code § 63G-6a-1002 (2013)*

### *Preference for Utah contractors*

A “resident contractor” is a person, partnership, corporation, or other business entity that either has its principal place of business in Utah or that employs workers who are residents of this state when available; and also was transacting business on the date when bids for the public contract were first solicited.

When awarding contracts for construction, the District shall grant a resident contractor a reciprocal preference over a nonresident contractor from any state that gives or requires a preference to contractors from that state. The amount of the reciprocal preference shall be equal to the amount of the preference applied by the nonresident contractor’s state. To receive the reciprocal preference under this section, the bidder shall certify on the bid that the bidder qualifies as a resident contractor. Without that certification on the bid, the reciprocal preference is waived.

If the contractor submitting the lowest responsive and responsible bid is a nonresident contractor and has a principal place of business in a state giving or requiring a preference to contractors from that state, and if a resident contractor has also submitted a responsive and responsible bid, and, with the benefit of the reciprocal preference, the resident contractor’s bid is equal to or less than the original lowest bid, the District shall notify the resident contractor that the resident contractor qualifies as a preferred resident contractor and issue the contract to the resident contractor if that contractor agrees, in writing, to meet the low bid within 72 hours after notice of preferred resident contractor status. The District notice shall include the exact price submitted by the lowest bidder. The District may not enter into a contract with any other bidder for the construction until 72 hours have elapsed after notice to the preferred resident contractor. If there is more than one preferred resident contractor, the District shall award the contract to the willing preferred resident contractor who was the lowest preferred resident contractor originally. If there

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were two or more equally low preferred resident contractors, the District shall comply with the rules of the Procurement Policy Board to determine which bidder should be awarded the contract.

This section does not apply if application of the section might jeopardize the receipt of federal funds.

*Utah Code § 63G-6a-1003 (2013)*

### *Federal requirements exception to preferences*

Neither the Utah products preference nor the Utah resident contractor preference apply to the extent that they conflict with federal requirements relating to a procurement that involves the expenditure of federal assistance, federal contract funds, or federal financial participation funds.

*Utah Code § 63G-6a-1004 (2012)*