Procurement:
Awarding Contracts by Request for Proposals

Definitions—

- "Design-build" means the procurement of design professional services and construction by the use of a single contract with the design-build provider.
- "Service" means labor, effort, or work to produce a result that is beneficial to a procurement unit and includes a professional service. "Service" does not include labor, effort, or work provided under an employment agreement or a collective bargaining agreement.
- "Professional service" means labor, effort, or work that requires an elevated degree of specialized knowledge and discretion, including labor, effort, or work in the field of (a) accounting, (b) administrative law judge service, (c) architecture, (d) construction design and management, (e) engineering, (f) financial services, (g) information technology, (h) law, (i) medicine, (j) psychiatry, or (k) underwriting.
- A "public-private partnership" means an arrangement or agreement between a procurement unit and one or more contractors to provide for a public need through the development or operation of a project in which the contractor or contractors share with the procurement unit the responsibility or risk of developing, owning, maintaining, financing, or operating the project.

Utah Code § 63G-6a-103(2~~98~~), (61), (68), (79) (2019~~98~~)

Request for Proposals—

The District may use the request for proposals procurement process in accordance with rules of the Utah Procurement Policy Board. The request for proposals procurement process is appropriate for use in selecting the proposal that provides the best value or which is the most advantageous to the District, including when (a) the procurement involves a contract whose terms and conditions are to be negotiated in order to achieve the result which is most advantageous to the District, (b) cost is not the most important factor to be considered in making the selection that is most advantageous to the District, (c) factors apart from or in addition to cost are highly significant in making the selection that is the most advantageous to the District, or (d) the District anticipates entering into a public-private partnership. The request for proposals process is appropriate for the procurement of professional

services and for procurement of design-build or construction manager/general contractor services.

Utah Code § 63G-6a-702 (2017)
Utah Code § 63G-6a-1911(2) (2013)

Specifications—

The specifications for the request for proposals shall be developed according to the requirements and process set out in Policy CBA.

Request for Proposals Process—

The request for proposals procurement process begins when the District issues a request for proposals. The District shall publish a request for proposals in accordance with the notice requirements of Policy CBA.

Utah Code § 63G-6a-703(1), (3) (2017)

Content of request

A request for proposals shall:

- state the period of time during which a proposal will be accepted;
- describe the manner in which a proposal shall be submitted, including a description of the required format, any required forms, and how to submit price proposals;
- state the place where a proposal shall be submitted;
- to the extent practicable, include, or incorporate by reference, a full description of the procurement items sought and the full scope of work;
- include, or incorporate by reference, a description of the subjective and objective criteria that will be used to evaluate the proposal;
- include, or incorporate by reference, the standard contractual terms and conditions required by the authorized purchasing entity;
- if the request for proposals is for a construction project, require each offeror to include in the proposal a description of the offeror's company safety plan and the offeror's safety plan for the specific project that is the subject of the proposal;
- state the relative weight that will be given to each score awarded for the evaluation criteria, including cost;
- state the formula that will be used to determine the score awarded for the cost of each proposal;

- if the request for proposals will be conducted in multiple stages, as described below, include a description of the stages and the criteria, scoring, and methodology that will be used to screen offerors at each stage;
- state that best and final offers may be allowed, as provided by law and this policy, from responsible offerors who submit responsive proposals that meet minimum qualifications, evaluation criteria, or applicable score thresholds identified in the request for proposals; and
- if applicable to the request, state that the District anticipates the procurement process to result in the District entering into a public-private partnership.

Utah Code § 63G-6a-703(2) (2017)
Utah Admin. Rules R33-7-102(1) (~~June 21, 2017~~July 26, 2018)
Utah Admin. Rules R33-7-103 (July 26, 2018~~June 21, 2017~~)

Addenda to requests for proposals

Addenda to a request for proposals may be made for the purpose of making changes to:

(1) the scope of work;

(2) the schedule;

(3) the qualification requirements;

(4) the criteria;

(5) the weighting; or

(6) other requirements of the request for proposals.

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 require a shorter period of time.

After the due date and time for submitting a response to a request for proposals, at the discretion of the Procurement Officer or Board of Education or its designee, 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 request for proposals that, in the opinion of the Procurement Officer or Board of Education or its designee likely would have impacted the number of offerors responding to the original publication of the request for proposals.

Utah Admin. Rules R33-7-301 (July 26, 2018~~June 21, 2017~~)

Evaluation criteria

Each proposal shall be evaluated using only the criteria described in the request for proposals. The criteria set forth in the request for proposals may include experience, performance ratings, inspection, testing, quality, workmanship, time, manner, or schedule of delivery, references, financial solvency, suitability for a particular purpose, management plans, cost, the offeror's willingness and capability to enter into a public-private partnership (if applicable), or other specified subjective or objective criteria. The criteria must include the existence and quality of the offeror's company safety plan and the offeror's safety plan for the specific project that is the subject of the proposal.

Utah Code § 63G-6a-707(1), (2) (2017)

Minimum score thresholds must be set forth in the request for proposals and clearly describe the minimum score threshold that proposals must achieve in order to advance to the next stage in the process or to be awarded a contract. Such thresholds may be based on (a) minimum scores for each evaluation category, (b) the total of each minimum score in each evaluation category based on the total points available, or (c) a combination of (a) and (b). Thresholds may not be based on a natural break in scores that was not defined and set forth in the request for proposals or on a predetermined number of offerors.

Utah Admin. Rules R33-7-501.5 (~~June 21, 2017~~July 26, 2018)

Exceptions to terms and conditions

Offerors requesting exceptions and/or additions to the standard terms and conditions published in the request for proposals must include the exceptions and/or additions with the proposal response. 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 request for proposals, the exceptions and/or additions have been approved by the District's legal counsel, and it is determined by the Board of Education or its designee that it is not beneficial to the District to republish the request for proposals. Offerors may not submit requests for exceptions and/or additions by reference to a vendor's website or URL.

The District may refuse to negotiate exceptions and/or additions:

(1) that are determined to be excessive;

(2) that are inconsistent with similar contracts of the District;

(3) to warranties, insurance, indemnification provisions that are necessary to protect the District after consultation with legal counsel;

(4) where the request for proposals specifically prohibits exceptions and/or additions; or

(5) that are not in the best interest of the District.

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.

If, in the negotiations of exceptions and/or additions with a particular offeror, an agreement is not reached, after a reasonable amount of time, as determined by the District, the negotiations may be terminated and a contract not awarded to that offeror and the District may move to the next eligible offeror.

Utah Admin. Rules R33-7-104 (~~June 21, 2017~~July 26, 2018)

Submission of confidential information

The following are protected records and may be redacted by the vendor 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: (a) trade secrets, as defined in Utah Code § 13-24-2; (b) commercial information or non-individual financial information (subject to the provisions of Utah Code § 63G-2-305(2); and (c) other protected records under GRAMA.

Any person requesting that a record be protected shall include with the proposal or submitted document:

(1) a written indication of which provisions of the proposal or submitted document are claimed to be considered for business confidentiality or protected (including trade secrets or other reasons for non-disclosure under GRAMA); and

(2) a concise statement of the reasons supporting each claimed provision of business confidentiality or protected status.

Utah Admin. Rules R33-7-105 (July 26, 2018~~June 21, 2017~~)

A person who complies with the above requirements shall be notified by the District prior to the public release of any information for which a claim of confidentiality has been asserted.

Except as provided by court order, when the District or the State Records Committee has determined that disclosure is required for a record requested under GRAMA which is subject to a claim of business confidentiality, the District may not disclose that record until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal, is reached. This limitation 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.

Any allowed disclosure of public records submitted in the request for proposal process will be made only after the selection of the successful offeror(s) has been made public as required by law.

Utah Admin. Rules R33-7-106 (July 26, 2018~~June 21, 2017~~)

Process for submission of protected information

If an offeror submits a proposal that contains information claimed to be business confidential or protected information, the offeror must submit two separate proposals:

(1) One redacted version for public release, with all protected business confidential information either blacked-out or removed, clearly marked as "Redacted Version"; and

(2) One non-redacted version for evaluation purposes clearly marked as "Protected Business Confidential."

Pricing may not be classified as business confidential and will be considered public information.

An entire proposal may not be designated as "PROTECTED", "CONFIDENTIAL" or "PROPRIETARY" and shall be considered non-responsive unless the offeror removes the designation.

Utah Admin. Rules R33-7-107 (July 26, 2018~~June 21, 2017~~)

Pre-proposal conferences or site visits

Pre-proposal conferences and site visits may be held to explain the procurement requirements as follows:

(1) Except as authorized in writing by the Procurement Officer or Board of Education or its designee, pre-proposal conferences and site visits must require mandatory attendance by all offerors.

(2) A pre-proposal conference may be attended in person, by teleconference, by webinar, or by other electronic media approved by the Procurement Officer or Board of Education or its designee.

(3) Site visits must be attended in person.

(4) All pre-proposal conferences and site visits must be attended by an authorized representative of the person or vendor submitting a proposal and as may be further specified in the procurement documents.

(5) The request for proposals must state that failure to have at least one authorized representative in attendance for the entire duration of each pre-proposal conference or site visit shall result in the disqualification of that offeror.

(6) If the Procurement Officer or Board of Education or its designee in writing waives the mandatory attendance requirement for a pre-proposal conference or site visit, the District may use audio or video recordings of pre-proposal conferences and site visits and may require all offerors that do not have an authorized representative in attendance for the entire duration of the conference or site visit to review the recording.

If a pre-proposal conference or site visit is held, the District shall maintain and publish as an addendum to the solicitation:

(1) an attendance log including the name of each attendee, the entity the attendee is representing, and the attendee's contact information;

(2) minutes of the pre-proposal conference or site visit; and

(3) copies of any documents distributed by the District to the attendees at the pre-proposal conference or site visit.

Any verbal modifications to any solicitation documents made in a pre-proposal conference or site visit shall be reduced to writing and shall also be published as an addendum to the solicitation.

Utah Admin. Rules R33-7-201 (July 26, 2018~~June 21, 2017~~)

Cancellation of request for proposals

A request for proposals may be canceled by the District prior to the deadline for submission of proposals when the District determines it is in its best interest. If the District cancels a request for proposals, the reasons for the cancellation shall be made part of the procurement file and shall be available for public inspection. The District shall then either re-solicit proposals (using the same or revised specifications) or withdraw the requisition for the procurement item or items.

Utah Admin. Rules R33-9-101 (June 21, 2017)

No proposals submitted

If there is no initial response to an initial request for proposals, the Procurement Officer or Board of Education or its designee may:

(1) contact the known supplier community to determine why there were no responses to the request;

(2) research the potential vendor community; and,

(3) modify the invitation for bids based upon the information gathered.

If the District has modified the request for proposals and re-issued it and still receives no proposals or there is insufficient competition, the Procurement Officer or Board of Education or its designee shall require the District to further modify the procurement documents or cancel the requisition for the procurement item(s).

Utah Admin. Rules R33-9-102 (June 21, 2017)

Proposal submission

Proposals (and modifications to proposals) submitted after the established due date and time will not be accepted for any reason except when the District determines that an error on the part of the District or its employee resulted in the proposal (or modification to a proposal) not being received by the due date and time.

All proposals or modifications to proposals received by physical delivery will be date and time stamped by the District. 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.

When submitting a proposal or modification 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 middle of uploading a proposal when the closing time arrives, the system will stop the process and the proposal or modification to the proposal will not be accepted.

Utah Admin. Rules R33-7-402 (July 26, 2018~~June 21, 2017~~)

Proposal opening and acceptance

The District shall ensure that proposals are opened in a manner that avoids disclosing the contents to competing offerors during the evaluation process. The District may not accept a proposal after the time for submission of a proposal has expired. An offeror may withdraw or modify a proposal prior to the due date for submission of proposals. The District shall accept a proposal after the due date for submission if the District determines that an error on the part of the District or its employee resulted in the proposal (or modification to a proposal) not being received by the due date and time.

Utah Code § 63G-6a-704(1), (2) (2014)
Utah Admin. Rules R33-7-402(4) (July 26, 2018~~June 21, 2017~~)

Rejection of Non-responsible or Nonresponsive Proposals

At any time during the request for proposals process, The District may reject a proposal if it determines that the person submitting the proposal is not responsible or that the proposal is not responsive or does not meet mandatory minimum requirements stated in the request for proposals.

Utah Code § 63G-6a-704(3) (2014)

Cancellation before award

The District may cancel a request for proposals before award but after opening if it determines in writing that:

(1) the scope of work or other requirements in the request for proposals were not met by any person and all responses have been determined to be either nonresponsive or from vendors who are not responsible;

(2) an infraction of code, rule, or policy has occurred;

(3) inadequate, erroneous, or ambiguous specifications or requirements were cited in the request for proposals;

(4) the request specifications have been or must be revised;

(5) the procurement item(s) being solicited are no longer required;

(6) the request for proposals did not provide for consideration of all factors of cost to the District, such as cost of transportation, warranties, service and maintenance;

(7) the proposals received indicate that the District's needs can be satisfied by a less expensive procurement item differing from that in the request for proposals;

(8) except as provided below regarding proposals which exceed available funds, all otherwise acceptable proposals received are at unreasonable prices, or only one proposal is received and the Procurement Officer or Board of Education or its designee cannot determine the reasonableness of the price or cost proposal;

(9) other reasons specified in the Procurement Code or Administrative Rule; or,

(10) other circumstances deemed to constitute reasonable cause by the Procurement Officer or the Board of Education or its designee.

However, the District may not cancel and reissue a request for proposals to steer a contract to a favored vendor or (except as permitted under protest and appeal provisions) to make a vendor who was previously disqualified or rejected eligible for a contract award for the same procurement item.

Utah Admin. Rules R33-9-103 (June 21, 2017)

If the District has an existing contract for a procurement item that the request for proposals is to obtain and the request for proposals is delayed due to an unintentional error, the District may permit the extension of the existing contract as permitted in Policy CBF.

Utah Code § 63G-6a-802.7 (2017)

Correction or clarification of proposal or cancellation of contract

The Board of Education or its designee may allow a vendor to correct an immaterial error in a proposal, as provided in Policy CBA and may also request a vendor to clarify information contained in a proposal, as provided in Policy CBA. However, except as permitted with regard to best and final offers, as set forth below, a vendor may not change the total amount of the cost proposal after the deadline for submitting a cost proposal and before a contract is awarded. (This does not apply to a change in the contract price during contract administration, as may otherwise be allowed under these policies.).

Utah Code § 63G-6a-706 (2016)

In the event an offeror submits a proposal that on its face appears to be impractical, unrealistic or otherwise in error, the Procurement Officer or Board of Education or its designee may contact the offeror to either confirm the proposal, permit a correction of the proposal, or permit the withdrawal of the proposal, in accordance with the prior paragraph.

Offerors may not correct errors, deficiencies, or incomplete responses in a proposal from an offeror who has been determined to be not responsible, or a proposal that is not responsive, or that does not meet the mandatory minimum requirements stated in the request for proposals.

Withdrawal of proposal

An offeror may voluntarily withdraw a proposal at any time before a contract is awarded with respect to the request for proposals for which the proposal was submitted provided the offeror is not engaged in any type of bid rigging, collusion or other anticompetitive practice made unlawful under other applicable law

Utah Admin. Rules R33-7-502 (July 26, 2018~~June 21, 2017~~)

If the District encounters administrative difficulties before award but after the deadline for submissions that may delay award beyond the offerors' acceptance periods, the offerors should be requested, before expiration of their offers, to extend in writing the acceptance period (with consent of sureties, if any) in order to avoid the need for cancellation.

Utah Admin. Rules R33-9-104 (June 21, 2017)

The District may reject any or all proposals, in whole or in part, as may be specified in the request for proposals, when it is in the best interest of the District. In the event of a rejection of any or all proposals, in whole or in part, the reasons for rejection shall be made part of the procurement file and shall be available for public inspection.

Utah Admin. Rules R33-9-201 (June 21, 2017)

Establishment of evaluation committee

The District shall appoint an evaluation committee consisting of at least three individuals with at least a general familiarity with or a basic understanding of either (1) the technical requirements relating to the type of procurement item that is the subject of the request for proposals or (2) the need that the request is intended to address. The District shall ensure that the evaluation committee and each individual participating in the evaluation process (a) does not have a conflict of interest with any of the offerors, (b) can fairly evaluate each proposal, (c) does not contact or communicate with an offeror outside the official evaluation committee process; and (d) conducts or participates in the evaluation in a manner that ensures a fair and competitive process and avoids the appearance of impropriety. The District may authorize the evaluation committee to receive assistance in better understanding a technical issue involved in the request for proposals from an expert or consultant who is not a member of the committee and who does not participate in evaluation scoring. The evaluation committee may, with the approval of the Board of Education or its designee and as outlined in the request for proposals, conduct interviews with, or attend presentations by, the offerors for the purpose of clarifying information contained in proposals. However, in such interactions, an offeror may only explain, illustrate, or interpret the contents of the original proposal. The offeror may not (1) address criteria or specifications not contained in the original proposal, (2) correct any deficiency, inaccuracy, or mistake other than an immaterial error, (3) remedy an incomplete submission of documents, (4) remedy an untimely proposal submission, (5) substitute or alter a required form, (6) remedy a cause for the offeror being considered not responsible or the proposal not responsive, or (7) correct a failure to meet mandatory minimum requirements, evaluation criteria, or score thresholds. Generally, each member of the evaluation committee is prohibited from knowing, or having access to, any information relating to the cost, or the scoring of the cost, of a proposal until after the committee submits its final recommended scores on all other criteria to the District. However, this restriction does not apply if the Board of Education or other individual designated by Procurement Policy Board rule signs a written statement (a) indicating that, due to the nature of the proposal or other circumstances, it is in the best interest of the District to waive compliance with this restriction and (b) describing the nature of the proposal and the other circumstances

relied upon to waive compliance with the restriction, and also makes the written statement available to the public upon request.

Utah Code § 63G-6a-707(3), (4), (5), (6), (9) (2017)
Utah Admin. Rules R33-7-703(2)(b)(i), (3), (4) (July 26, 2018~~June 21, 2017~~)

Evaluation of proposals

Initial review

The District shall perform an initial review of submitted proposals to determine whether the proposals satisfy any pass/fail minimum requirements set forth in the request for proposals and whether the proposals are responsive and responsible or in violation of the Utah Procurement Code. Examples of possible pass/fail minimum requirements include timeliness of receipt of proposals, qualifications, certifications, licensing, experience, compliance with State or Federal regulations, services provided, product availability, equipment, or other pass/fail minimum requirements set forth in the request for proposals. The evaluation committee may not review proposals from offerors determined to be not responsible or proposals which do not meet the minimum requirements or which are deemed nonresponsive or in violation of the Procurement Code.

Utah Admin. Rules R33-7-703(1) (July 26, 2018~~June 21, 2017~~)

Any proposal that fails to conform to the essential requirements of the request for proposals shall be rejected. Any proposal that does not conform to the applicable specifications shall be rejected unless the request for proposals authorized the submission of alternate proposals and the procurement item(s) offered as alternates meet the requirements specified in the solicitation. Any proposal that fails to conform to the delivery schedule or permissible alternates stated in the request for proposals shall be rejected.

A proposal shall be rejected when the offeror imposes conditions or takes exceptions that would modify requirements or terms and conditions of the request for proposals or limit the offeror's liability for the procurement, since to allow the offeror to impose such conditions or take exceptions would be prejudicial to another person. For example, proposals shall be rejected in which the offeror:

(1) for commodities, protects against future changes in conditions, such as increased costs, if total possible costs to the District cannot be determined;

(2) fails to state a price and indicates that price shall be the price in effect at time of delivery or states a price but qualifies it as being subject to price in effect at time of delivery;

(3) when not authorized by the request for proposals, conditions or qualifies a proposal by stipulating that it is to be considered only if,

before date of award, the offeror receives (or does not receive) an award under a separate solicitation;

(4) requires that the District is to determine that the offeror's product meets applicable specifications; or

(5) limits rights of the District under any contract clause.

Utah Admin. Rules R33-9-202 (June 21, 2017)

The originals of all rejected proposals and all written findings with respect to such rejections shall be made part of the procurement file and made available for public inspection.

Utah Admin. Rules R33-9-204(3) (June 21, 2017)

Evaluation procedure

The evaluation committee shall evaluate each responsive proposal from a responsible offeror which has not been disqualified upon initial review and determine which proposal provides the best value to the District. Each proposal shall be evaluated and scores awarded using the criteria and as provided in the request for proposals. The evaluation committee may ask questions of offerors to clarify proposals provided the questions are submitted and answered in writing. The record of questions and answer shall be maintained in the file relating to the request for proposals.

Utah Code § 63G-6a-707(1) (2017)
Utah Admin. Rules R33-7-501(2) (July 26, 2018~~June 21, 2017~~)

Prior to the evaluation and scoring of proposals, a District procurement officer will meet with the evaluation committee, District staff, and any other person that will have access to the proposals to:

(1) explain the evaluation and scoring process;

(2) discuss requirements and prohibitions regarding socialization with vendors as set forth in R33-24-104, financial conflicts of interest as set forth in R33-24-105, personal relationships, favoritism, or bias as set forth in R33-24-106, disclosing confidential information contained in proposals or the deliberations and scoring of the evaluation committee, and ethical standards for an employee involved in the procurement process as set forth in R33-24-108;

(3) review the scoring sheet and evaluation criteria set forth in the request for proposals; and

(4) provide a copy of Administrative Rule R33-7-703 to the evaluation committee, district staff involved in the request for proposals, and any other person that will have access to the proposals.

Utah Admin. Rules R33-7-703(2)(a) (July 26, 2018~~June 21, 2017~~)

At each stage of the request for proposals process, the District is required to ensure that evaluation committee members, employees of the District, and any other person participating in the request for proposals process does not have a conflict of interest with any of the offerors, do not contact or communicate with an offeror about the requests for proposals outside the official process, and conduct or participate in the request for proposals process in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.

Utah Admin. Rules R33-7-703(2)(b)(i) (July 26, 2018~~June 21, 2017~~)

Prior to participation in any phase of the request for proposals process, all members of the evaluation committee must sign a written statement certifying that they do not have a conflict of interest as set forth in Utah Code § 63G-6a-707.

Utah Admin. Rules R33-7-703(2)(b) (July 26, 2018~~June 21, 2017~~)

Unless an exception is authorized by the Board of Education or its designee, in order to avoid cost influencing the evaluation committee's scoring of non-price criteria, in accordance with Utah Code § 63G-6a-707, the evaluation committee is prohibited from knowing or having access to any information relating to the cost, or the scoring of the cost, of a proposal until after the committee has finalized its scoring of non-price technical criteria in the request for proposals and submitted those scores to the District.

Utah Admin. Rules R33-7-703(3) (July 26, 2018~~June 21, 2017~~)

After receipt of proposals, each committee member shall independently, as described below, read and assign a preliminary draft score each proposal based on each of the technical non-price criteria set forth in the request for proposals to assess the completeness, quality, and desirability of each proposal. Proposals must be evaluated solely on the stated criteria listed in the request for proposals. As provided for above, committee members may with District approval receive assistance with technical issues.

As stated above, the evaluation committee may enter into discussions, conduct interviews with, or attend presentations by responsible offerors with responsive proposals that meet the minimum mandatory requirements of the request for proposals for the purpose of clarifying information contained in the proposals.

Utah Admin. Rules R33-7-703(4)(e) (July 26, 2018~~June 21, 2017~~)

After each proposal has been independently evaluated by each member of the evaluation committee, each committee member shall independently assign a

preliminary draft score for each proposal for each of the non-priced technical criteria listed in the request for proposals. After completing the preliminary draft scoring, the evaluation committee shall enter into deliberations to review each committee member's preliminary draft scores, resolve any factual disagreements, modify their preliminary draft scores based on their updated understanding of the facts, and derive the committee's final recommended consensus scoring for the non-priced technical criteria of each proposal.

Utah Admin. Rules R33-7-703(5)(a) (July 26, 2018~~June 21, 2017~~)

During the evaluation process, the evaluation committee may recommend to the District that a proposal be rejected as made by a non-responsible offeror, as being non-responsive, as not meeting the mandatory minimum requirements, or as not meeting any applicable minimum score threshold.

Utah Admin. Rules R33-7-703(5)(b) (July 26, 2018~~June 21, 2017~~)

In order to score proposals fairly, an evaluation committee member must be present at all evaluation meetings and must review all proposals, including (if applicable) oral presentations. If a committee member does not attend an evaluation committee meeting, the meeting may be canceled and rescheduled. If a committee member fails to attend an evaluation committee meeting, leaves a meeting early, or fails for any reason to fulfill the duties and obligations of a committee member, that member shall be removed from the evaluation committee. The remainder of the committee may proceed with the evaluation, provided there are at least three evaluation committee members remaining. A committee member may attend or participate on an evaluation committee via electronic means (for example, a conference call, a webcam, an online business application, or other means).

Utah Admin. Rules R33-7-703(5)(c), (d) (July 26, 2018~~June 21, 2017~~)

At any time during the evaluation process, the evaluation committee may, with the approval of the District and subject to the requirements set forth below, request best and final offers from responsible offerors who have submitted responsive proposals that meet the minimum qualifications, evaluation criteria, or applicable thresholds and evaluate those offers in accordance with Utah Code § 63G-6a-708, as described below.

The evaluation committee shall derive its final recommended consensus score for the non-priced technical criteria by either (a) totaling all of the points given by individual committee members, or (b) averaging the scores given by individual committee members.

The evaluation committee shall submit its final score sheet, signed and dated by each committee member, to the District for review.

Utah Admin. Rules R33-7-703(6) (July 26, 2018~~June 21, 2017~~)

The evaluation committee may not change its consensus final recommended non-priced technical criteria scores for the proposals after they have been submitted to the District unless the District authorizes a best-and-final-offer process to be conducted.

Utah Admin. Rules R33-7-703(7) (July 26, 2018~~June 21, 2017~~)

The District will review the evaluation committee's final recommended non-priced technical criteria scores. If the District identifies errors, scoring inconsistencies, or reported noncompliance with procurement law and requirements, the District shall either correct those matters or cancel the procurement. The District shall, if applicable, assign an individual who is not a member of the evaluation committee to calculate scores for cost based on the applicable scoring formula, weighting, and other scoring procedures contained in the request for proposals. The District shall score the cost of each proposal based on the applicable scoring formula and calculate the total combined score for each proposal.

Utah Code § 63G-6a-707(6)(b), (c) (2017)
Utah Admin. Rules R33-7-703(8) (July 26, 2018~~June 21, 2017~~)

The evaluation committee and the District shall prepare the cost justification statement and any applicable cost-benefit analysis in accordance with Utah Code 63G-6a-708.

Utah Admin. Rules R33-7-703(10) (July 26, 2018~~June 21, 2017~~)

The District's role as a non-voting member of the evaluation committee will be to facilitate the evaluation process within the guidelines of the Utah procurement code and administrative rule.

Utah Admin. Rules R33-7-703(11) (July 26, 2018~~June 21, 2017~~)

The Board of Education may remove a member of an evaluation committee for (1) having a conflict of interest or the appearance of a conflict of interest with a person responding to a request for proposals, (2) having an unlawful bias or the appearance of an unlawful bias against a person responding to a request for proposals, (3) having a pattern of arbitrary, capricious, or clearly erroneous scores that are unexplainable or unjustifiable (4) having inappropriate contact or communication with a person responding to the request for proposals, (5) socializing inappropriately with a person responding to the request for proposals, (6) engaging in any other action or having any other association that causes the Board to conclude that the individual cannot fairly evaluate a response to the request for proposals, or (7) any other violation of law, rule, or policy. The District may reconstitute the committee in any way it deems appropriate to cure any such impropriety. If the impropriety cannot be cured by replacing a member, then a new committee may be appointed or the procurement cancelled and the request for proposals reissued.

Utah Admin. Rules R33-7-703(12) (July 26, 2018~~June 21, 2017~~)

Scoring of proposals

The scoring of evaluation criteria, other than cost, for proposals meeting the mandatory minimum requirements in a request for proposals shall be based on ~~a one- through five-point~~ the scoring system set forth in the RFP. Scoring systems other than the standard methodology set forth below may be used so long as they are set forth in the RFP, allow for competition, and are reasonable. Points shall be awarded to each applicable evaluation category as set forth in the request for proposals, which may include~~ing~~ but are not limited to:

(1) Technical specifications;

(2) Qualifications and experience;

(3) Programming;

(4) Design;

(5) Time, manner, or schedule of delivery;

(6) Quality or suitability for a particular purpose;

(7) Financial solvency;

(8) Management and methodological plan;

(9) Performance ratings or references; and

~~(10) Other requirements specified in the request for proposals.~~

Standard Scoring Methodology:

(1) Five points (Excellent): The proposal addresses and exceeds all of the requirements or criteria described in the request for proposals;

(2) Four points (~~Very~~ Good): The proposal addresses all of the requirements or criteria described in the request for proposals and, in some respects, exceeds them;

(3) Three points (Satisfactory~~Good~~): The proposal addresses all of the requirements or criteria described in the request for proposals in a minimum satisfactory manner;

(4) Two points (Unsatisfactory~~Fair~~): The proposal addresses the requirements or criteria described in the request for proposals in an unsatisfactory manner; ~~or~~

(5) One point (Poor): The proposal inadequately addresses the requirements or criteria described in the RFP or cannot be assessed due to incomplete information; or

~~(5)~~(6) Zero points (Fail): The proposal fails to address the requirements or criteria described in the request for proposals or it cannot be assessed due to missing information~~addresses the requirements inaccurately or poorly, or it fails to demonstrate that the vendor can perform the scope of work or supply the procurement items~~.

Utah Admin. Rules R33-7-704 (~~June 21, 2017~~July 26, 2018)

Independent judgment by evaluation committee members

Evaluators are required to exercise independent judgment in a manner that is not dependent on anyone else's opinions or wishes. Evaluators must not allow their scoring to be inappropriately influenced by another person's wishes that additional or fewer points be awarded to a particular offeror. Evaluators may seek to increase their knowledge before scoring by asking questions and seeking appropriate information from the District. Otherwise, evaluators should not discuss proposals or the scoring of proposals with other persons not on the evaluation committee.

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 lead to coercion or intimidation on the part of one committee member to influence the scoring of another committee member.

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.

Evaluators are required to report any attempts by others to improperly influence their scoring to favor or disfavor a particular offeror.

If an evaluator feels that the evaluator's independence has been compromised, the evaluator must recuse himself or herself from the evaluation process.

Utah Admin. Rules R33-7-705 (July 26, 2018~~June 21, 2017~~)

Best and final offers

The best and final offers process is an optional step in the evaluation phase of the request for proposals process in which offerors are requested to modify their proposals. (It is not available for use with any other type of procurement process.) If the necessary conditions are present, the evaluation committee, with the approval of the Board of Education or its designee or the District's chief procurement officer, may request and evaluate best and final offers from responsible offerors who have submitted responsive proposals that meet the minimum qualifications, evaluation

criteria, or applicable score thresholds identified in the request for proposals for the stage of the process at which the final and best offers are being requested. The evaluation committee may only request best and final offers if one of the following circumstances exists:

(1) no single proposal addresses all the specifications stated in the request for proposals;

(2) all proposals received are unclear or deficient in one or more respects;

(3) all cost proposals exceed the identified budget or the District's available funding; or

(4) two or more proposals receive an identical evaluation score that is the highest score.

In a best and final offer, an offeror may only address the issues described in the request for best and final offers; the offeror may not correct a material error or deficiency in the original proposal or address any other issue not described in the request for best and final offers. The best and final offers process may not be used to change a determination that an offeror is not responsible or that an offer is not responsive.

The request for best and final offers shall clearly specify the issues that the District requests the offerors to address in their best and final offers and how the best and final offers will be evaluated and scored in accordance with the evaluation procedures of this policy. The request shall also establish a deadline for an offeror to submit a best and final offer and, if applicable, establish a schedule and procedure for conducting discussions with offerors concerning the best and final offers. After the deadline for submitting best and final offers, the evaluation committee shall evaluate the best and final offers using the criteria described in the request for proposals.

Unsolicited best and final offers will not be accepted and may not be considered by the District. If an offeror fails to submit a best and final offer, the offer submitted by the offeror before the request for best and final offers shall be treated as the offeror's best and final offer.

In conducting the best and final offers process, the District shall (a) maintain the confidentiality of the information the District receives from an offeror (including cost information) until a contract has been awarded or the request for proposals canceled, (b) ensure that each offeror receives fair and equal treatment, and (c) safeguard the integrity of the scope of the original request for proposals, except as specifically provided otherwise in this section regarding best and final offers.

When a request for best and final offers is issued to reduce cost proposals, the District may specify the scope of work reductions the District is making to

generate proposals within the budget or available funding or may invite offerors to specify the scope of work reductions being made so that the reduced cost proposal is within the budget or available funding. However, the District is not required to accept a scope of work reduction proposed by an offeror. A reduction in the scope of work may not eliminate a component identified as a minimum mandatory requirement in the request for proposals, nor may it alter the nature of the original request to the extent that a request for proposals for the reduced scope of work would have likely attracted a significantly different set of offerors submitting proposals. A best and final offer submitted with a reduced cost proposal shall include an itemized list identifying specific reductions in the proposed scope of work that correspond to the reduced cost proposal.

When a request for best and final offers is issued because two or more proposals received an identical and highest score, the request may only be issued to those offerors whose proposals received that highest score. The offerors responding to this request may revise the technical aspects of their proposal, their cost proposal (as provided in the prior paragraph), or both.

Utah Code § 63G-6a-707.5 (2017)

When selecting a construction manager/general contractor for a construction project, the evaluation committee may score a construction manager / general contractor based upon criteria contained in the solicitation, including qualifications, performance ratings, references, management plan, certifications, and other project specific criteria described in the solicitation. The committee may also, as described in the solicitation, weight and score the management fee as a fixed rate or as a fixed percentage of the estimated contract value. The committee may, at any time after the opening of the responses to the request for proposals, have access to, and consider, the management fee proposed by the offerors but may not know or have access to any other information relating to the cost of construction submitted by the offerors, until after the evaluation committee submits its final recommended scores on all other criteria to the District. (This restriction does not apply if it has been properly waived as set forth above under “Establishment of evaluation committee”.) A “management fee” includes only fees for preconstruction phase services, monthly supervision fees for the construction phase, and overhead and profit for the construction phase.

Utah Code § 63G-6a-707(7), (9) (2017)
Utah Admin. Rules R33-13-205(3) (June 21, 2017)

Justification Statement and Cost-Benefit Analysis

In determining which proposal provides the best value to the District, the evaluation committee and the District shall prepare a written justification statement that (a) explains the score assigned to each evaluation category, (b) explains how

the proposal with the highest total combined score provides the best value to the District compared to the other proposals, and (c) if applicable, includes the cost-benefit analysis described below and how that analysis relates to the best value to the District. (The explanation of evaluation category scores is not required to address each criterion within each category.) This cost-benefit analysis shall be based on the entire term of the contract, excluding any renewal periods. The determinations made in the justification and informal cost-benefit analysis are final and conclusive unless they are arbitrary and capricious or clearly erroneous.

If the highest score awarded by the evaluation committee, including the score for cost, is awarded to a proposal other than the lowest cost proposal, and the difference between the cost of the highest scored proposal and the lowest cost proposal exceeds the greater of $10,000 or 5% of the lowest cost proposal, the committee and the District shall make an informal written cost-benefit analysis that:

- explains, in general terms, the advantage to the District of awarding the contract to the higher cost offeror;
- includes, except as provided in the next sentence, the estimated added financial value to the District of each criterion that justifies awarding the contract to the higher cost offeror;
- includes, if assigning a financial value to a particular procurement item or evaluation criterion is not practicable, a written determination to that effect explaining (a) why it is not practicable to assign a financial value and (b) in nonfinancial terms, why awarding the contract to the higher cost offeror provides the best value to the District;
- demonstrates that the value of the advantage to the District of awarding the contract to the higher cost offeror exceeds the value of the difference between the cost of the higher cost proposal and the cost of the lower cost proposals.

If this informal cost-benefit analysis does not justify award of the contract to the offeror that received the highest score, the District may not award the contract to the offeror that received the highest score and may award the contract to the offeror that received the next highest score except when that offeror's proposal also meets the threshold for the informal cost-benefit analysis. In that case, the acceptability of the next highest proposal depends on the cost-benefit analysis justifying acceptance. If the cost-benefit analysis of the second highest proposal does not justify acceptance, then the District may not accept that proposal and must proceed to the third highest proposal, following the same process until the District awards the contract in accordance with this section or cancels the request for proposals.

The District is not required to make the cost-benefit analysis for a contract with a construction manager/general contractor if the contract is awarded based solely on the qualifications of the construction manager/general contractor and the management fee if the following requirements are satisfied:

(1) a competitive process is maintained by the issuance of a request for proposals that requires the offeror to provide, at a minimum:

a. a management plan;

b. references;

c. statements of qualifications; and

d. a management fee.

(2) the management fee contains only the following:

a. preconstruction phase services;

b. monthly supervision fees for the construction phase; and

c. overhead and profit for the construction phase.

(3) 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.

(4) the contract awarded must be in the best interest of the District.

Utah Code § 63G-6a-708 (2016)
Utah Code § 63G-6a-1911(3) (2013)
Utah Admin. Rules R33-7-701.1 (July 26, 2018~~June 21, 2017~~)
Utah Admin. Rules R33-7-701 (July 26, 2018~~June 21, 2017~~)

Withdrawal of proposal

An offeror may voluntarily withdraw a proposal at any time before a contract is awarded with respect to the request for proposals for which it was submitted provided the offeror is not engaged in any type of bid-rigging, collusion, or other anticompetitive practice made unlawful under other applicable law.

Utah Admin. Rules R33-7-502 (July 26, 2018~~June 21, 2017~~)

Award of contract

After completion of the evaluation and scoring of proposals and the justification statement, including any required cost-benefit analysis, the evaluation committee shall submit the proposals, evaluation scores, and justification statement to the Board of Education or its designee. After reviewing these materials, the Board of Education or its designee shall:

- award the contract as soon as practicable to the responsible offeror with responsive proposal receiving the highest total score, or
- if that proposal is rejected as provided for below, to the responsible offeror with the responsive proposal receiving the next highest total score, or
- repeat that process, moving to the next highest scored proposal until the contract is awarded to a responsible offeror who submitted a proposal which was not rejected; or
- cancel the request for proposals without awarding a contract.

The District's determination to award the contract to an offeror responding to a request for proposals is final and conclusive unless it is arbitrary and capricious or clearly erroneous.

Utah Code § 63G-6a-709(1), (2) (2017)
Utah Code § 63G-6a-1911(4) (2013)

If only one proposal is received in response to a request for proposals, the evaluation committee shall score the proposal and shall conduct a review to determine if the proposal meets the minimum requirements, pricing and terms are reasonable, and the proposal is in the best interest of the District. If the committee determines that all of these requirements are satisfied, the District shall issue a justification statement as provided above and may make an award. If an award is not made, the District may either cancel the procurement or resolicit for the purpose of obtaining additional proposals.

Utah Admin. Rules R33-7-702 (July 26, 2018~~June 21, 2017~~)

Rejection of Proposal

The Board of Education or the Procurement Officer may reject a proposal if the offeror (1) is not responsible, (2) is in violation of the Procurement Code, (3) has engaged in unethical conduct, or (4) fails to sign a contract (a) within the time specified in the request for proposals, or (b) 90 days after the contract award, or (c) the time period specified in writing by the Board of Education. A proposal may also be rejected if there is a change in the offeror's circumstances that, if known when the offer was evaluated, would have caused the offer to not receive the highest score. A proposal may also be rejected if it is not responsive or does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds stated in the request for proposals. Upon rejection of a proposal, the Board of Education or the Procurement Officer shall make a written finding stating the reasons for rejection and provide a copy of that finding to the offeror whose proposal was rejected. If the District cancels a request for proposals without awarding a contract, the District shall make available for public inspection a written justification for the cancellation.

Utah Code § 63G-6a-709(3) - (5) (2017)

Publication of award and scores

On the next business day after a contract award is announced, the District shall make available to each offeror and to the public a written statement which includes the name of the offeror being awarded the contract and that offeror's total score, the justification statement (including any cost-benefit analysis), and the total scores awarded to other offerors (but without identifying a particular offeror's score). The District may use codes or another method to distinguish unsuccessful offerors and to indicate their scores, as long as an offeror cannot be matched with the score awarded to that offeror.

Utah Code § 63G-6a-709.5 (2014)

With respect to a request for proposals process, the following shall be disclosed by the District after receipt of a GRAMA request and payment of any lawfully enacted and applicable fees:

(1) 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 as provided for above under "Submission of confidential information";

(2) the unsuccessful proposals, except for those portions that are to be non-disclosed as provided for above under "Submission of confidential information";

(3) the rankings of the proposals;

(4) the names of the members of any selection committee;

(5) the final scores used by the selection committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores or rankings; and

(6) the written justification statement supporting the selection, except for those portions that are to be non-disclosed as provided for above under "Submission of confidential information".

The following information will not be disclosed by the District at any time to the public including under any GRAMA request:

(1) the names of individual scorers/evaluators in relation to their individual scores or rankings;

(2) any individual scorer's/evaluator's notes, drafts, and working documents;

(3) non-public financial statements; and

(4) 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. However, to the extent such past performance or reference information is included in the written justification statement, it is subject to public disclosure.

Utah Admin. Rules R33-7-802 (July 26, 2018~~June 21, 2017~~)

Multiple Stage Request for Proposals—

The District may conduct a request for proposals in stages, where an earlier stage is used 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 shall be conducted according to this policy.

Utah Code § 63G-6a-710 (2013)

Multiple Stage Cost Qualification Request for Proposals Process—

The Procurement Policy Board allows the District to use a multiple stage cost qualification request for proposals process. This is appropriate for use when the District does not want to spend time evaluating the technical responses of proposals with cost estimates that exceed the stated budget or significantly exceed the lowest cost proposal. A multiple stage cost qualification request for proposals process shall be conducted as follows.

Definitions

For purposes of this process, the following definitions will apply:

- "Multiple stage cost qualification RFP process" means a multiple stage RFP process in which cost proposals are evaluated prior to the evaluation of technical criteria and are used to reject offerors based on established cost criteria.
- "Maximum cost differential percentage threshold" is a cost ceiling that is established by the District that an offeror's cost proposal must not exceed or the offeror's proposal will be rejected and the offeror will not be allowed to proceed to a subsequent stage. The maximum cost differential percentage threshold may be based on the lowest cost proposal submitted, or the District's stated budget, or a combination of those two. For example:
    - If the maximum cost differential percentage threshold is established as within 10% above the lowest cost proposal, then any proposal with a cost exceeding the lowest cost proposal by more than 10% will be rejected, while proposals with costs that

do not exceed that amount will move on to the subsequent stage.

- If the maximum cost differential percentage threshold is established as within 5% above the District's stated project budget, then any proposal with a cost exceeding the budget by more than 5% will be rejected, while proposals with costs that do not exceed that amount will move on to the subsequent stage.
- If the maximum cost differential percentage threshold is established as within 8% above the lowest cost proposal and within 2% above the District's stated project budget, then any proposal with a cost exceeding the lowest cost proposal by more than 8% or a cost exceeding the budget by more than 2% will be rejected, while proposals with costs that do not exceed either threshold will move on to the subsequent stage.

Required Content in Request for Proposals

When using the multiple stage cost qualification RFP process, the District shall establish and include in the request for proposals:

1) The minimum mandatory pass or fail requirements that proposals must meet in stage one in order to move on to stage two;
2) The maximum cost differential percentage threshold that proposals must not exceed in stage two in order to move on to stage three;
3) The technical criteria and a score threshold that proposals must meet in stage three in order to be eligible to move on to stage four; and
4) If applicable, the total combined score threshold in stage four that proposals must meet to determine best value and be eligible for contract award.

Evaluation Process

Except as provided above in this policy with regard to the evaluation committee in specified circumstances having access to cost information, the following process shall be used to evaluate proposals and award a contract under this multiple stage process:

1) Stage One: An individual assigned by the District shall evaluate each offeror's proposal in response to the minimum mandatory pass or fail requirements set forth in the RFP. Offerors with proposals that do not meet the mandatory minimum pass or fail requirements shall be rejected and are not allowed to move on to subsequent stages and are

not eligible to receive a contract award; offerors with proposals that meet the mandatory minimum pass or fail requirements shall be deemed qualified to move on to stage two.

2) Stage Two: The District shall assign an individual who is not a member of the evaluation committee to evaluate the cost proposals of offerors qualified in stage one in response to the cost criteria and maximum cost differential percentage threshold set forth in the request for proposals. This evaluation shall be done outside the presence of the evaluation committee and neither the cost proposals nor the results of the cost proposal evaluations shall be shared with the evaluation committee until all technical scoring is completed in stage three. Offerors with cost proposals that exceed the maximum cost differential percentage threshold shall be rejected, not allowed to move on to subsequent stages, and not eligible to receive a contract award, while offerors with cost proposals that do not exceed the maximum cost differential percentage threshold shall be deemed qualified to move on to stage three. Cost shall be evaluated in accordance with the process outlined above in this policy, and a cost score shall be calculated based on the cost formula set forth in the RFP for each proposal qualified to move to stage three.

3) Stage Three: The evaluation committee shall score the proposal of each offeror qualified in stage two, in response to the technical evaluation criteria set forth in the RFP, without having access to any information relating to the cost or the scoring of the cost. Technical criteria shall be scored in accordance with the procedures set forth above in this policy.

4) Stage Four: The individual assigned by the District, who is not a member of the evaluation committee, shall add the cost scores to the evaluation committee's final recommended technical scores to derive the total combined score for each proposal in accordance with the process set forth above in this policy.

In order to determine best value to the District, the evaluation committee shall prepare a justification statement and, if applicable, a cost-benefit analysis. A contract may be awarded to the offeror with the proposal having the highest total combined score, or multiple contracts may be awarded to offerors with proposals meeting the total combined score threshold set forth in the RFP.

Utah Admin. Rules R33-7-103a (July 26, 2018~~June 21, 2017~~)