

JORDAN VALLEY WATER CONSERVANCY DISTRICT

# **ADMINISTRATIVE POLICY AND PROCEDURES**

## **APPENDIX 3 PURCHASING POLICY**

Revised, Effective as of July 10, 2024

JORDAN VALLEY WATER CONSERVANCY DISTRICT

PURCHASING POLICY  
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## PURCHASING POLICY AND PROCEDURES

### I. BACKGROUND

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

### II. DEFINITIONS

As used in the Policy, the following definitions shall be applicable:

- A. Board: The legislative body of the District is referred to herein as the "Board". For purposes of the Procurement Code and this Policy, the Board is the Applicable Rulemaking Authority for the District.
- B. Statutory Definitions: The definitions of terms set forth in Utah Code Ann. §§ 63G-6a-103 and -104, as they may be amended from time-to-time, are, to the extent applicable to this Policy and the activities of the District, incorporated herein by this reference.
- C. Procurement Officer: The General Manager shall be the District's "Procurement Officer." Other employees of the District may act as Procurement Officers as authorized and delegated by the Board and/or the Procurement Officer. References in this Policy to "Procurement Officer" shall include any "designee" or "delegate" designated by the Procurement Officer or the Board.

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<sup>1</sup> Utah Code Ann. §§ 63G-6a-101 *et. seq.*



D. Additional Definitions:

1. Act or Procurement Code: means the Utah Procurement Code found in Title 63G, Chapter 6a of the Utah Code.
2. Actual Costs: means direct and indirect costs which have been incurred for services rendered, supplies delivered, or construction built, as distinguished from allowable costs.
3. Adequate Price Competition: requires a minimum of two competitive bids, proposals, or quotes from responsive, responsible bidders or offerors.
4. Bid Bond: is either cash or an insurance agreement, accompanied by a monetary commitment, by which a third party (the Surety) accepts liability and guarantees that the bidder will not withdraw the bid. The bidder will furnish bonds in the required amount, and if the contract is awarded to the bonded bidder, the bidder must accept the contract as bid or the cash will be forfeited or the surety will pay the specified bond amount to the District.
5. Bid Rigging: is an agreement among potential competitors to manipulate the competitive bidding process, for example, by agreeing not to bid, to bid a specific price, to rotate bidding, or to give kickbacks.
6. Bid Security: means the deposit of cash or a certified check, cashier's check, bank draft, money order, or bid bond submitted with a bid and serving to guarantee to the District that the bidder, if awarded the contract, will execute the contract in accordance with the bidding requirements and the contract documents.
7. Brand Name or Equal Specification: means a specification which uses a brand name to describe the standard of quality, performance, or other characteristics being solicited, and which invites the submission of equivalent products.
8. Brand Name Specification: means a specification identifying one or more products by manufacturer name, product name, unique product identification number, product description, SKU, or catalog number.
9. Collusion: occurs when two or more persons act together to achieve a fraudulent or unlawful act.
10. Cost Analysis: means an evaluation of cost data for the purpose of arriving at estimates of costs to be incurred, prices to be paid, costs to be reimbursed, or costs actually incurred.
11. Cost Data: means factual information concerning the cost of labor, materials, overhead, and other cost elements which are expected to be incurred or which have actually been incurred by the contractor in performing the contract.
12. Cronyism: is an anticompetitive practice that may violate federal and/or state law. Cronyism in government contracting is a form of favoritism where contracts are awarded on the basis of friendship, association or political connections instead of fair and open competition.
13. Debarment: means that a supplier or vendor will be precluded from providing materials, goods and/or services to the District for a prescribed time.

14. Favored Vendor: applies to a situation wherein the Procurement Officer, an evaluation committee member, a contract administrator, or a District employee unfairly, by means of deceit or in violation of law, favors one vendor over another in the process of awarding a contract. Examples of ways in which District contracts may improperly be steered to a “favored vendor” include, but are not limited to:
- a. Collusion or manipulation of procurement to steer a contract award to a particular vendor;
  - b. Illegal bribes or kickbacks paid by a vendor in exchange for a contract award;
  - c. Unjustified sole source contract awards to a vendor;
  - d. Bid rigging schemes;
  - e. Writing specifications that are overly restrictive or written in a way that gives an unfair advantage to a particular vendor;
  - f. Improperly splitting purchases to avoid use of a standard competitive procurement process;
  - g. Leaking bid or proposal information to a particular vendor to the exclusion of other vendors; or
  - h. Not following established policies and procedures when approving change orders.
15. Manager: as used in this Policy refers to the chief executive officer of the District, whether that person’s official title is “General Manager”, “Executive Director”, or any other title, and includes any designee of the Manager.
16. Mandatory Requirement: means a condition set out in the specifications/statement of work that must be met without exception.
17. Minor Irregularity: is a variation from the solicitation that does not affect the price of the bid, offer, or contract or does not give a bidder/offeror an advantage or benefit not shared by other bidders/offerors, or does not materially, adversely impact the interests of the District.
18. Multi-Year Contract: means a contract that extends beyond a one-year period, including a contract that permits renewal of the contract, without competition, beyond the first year of the contract.
19. New Technology: means any invention, discovery, improvement, or innovation that was not available to the District on the effective date of the contract, whether or not patentable, including, but not limited to, new processes, emerging technology, machines, and improvements to or new applications of existing processes, machines, manufactures and software. Also included are new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable and any new process, machine, including software, and improvements to, or new applications of, existing processes, machines, manufactures and software.
20. Participating Addendum: means an agreement issued in conjunction with a State Cooperative Contract awarded by the Division of Purchasing and General

Services (a "Cooperative Contract") that authorizes a public entity such as the District to use the Cooperative Contract.

21. Payment Bond: is a bond that guarantees payment for labor and materials expended on the contract.
22. Price Analysis: means the evaluation of price data without analysis of the separate cost components and profit.
23. Price Data: means factual information concerning prices for procurement items.
24. Record: shall have the meaning specified in the Government Records Access and Management Act ("GRAMA"; Utah Code Ann. §§ 63-2-101 *et. seq.*).
25. Retention Schedule: refers to the record retention schedule applicable to the District as approved by the State Records Committee, or the model retention schedule maintained by the State Archivist if the District does not have its own approved retention schedule.
26. Surety Bond: (performance bond) means a promise to pay the District a certain amount if the principal (contractor) fails to meet some obligation, such as fulfilling the terms of a contract. The surety bond protects the District against losses resulting from the principal's failure to meet the obligation. In the event that any obligation is not met, the District may recover its losses via the bond.

### III. GENERAL PROVISIONS

- A. Procurement Officer: Except as otherwise specifically authorized by the Board or this Policy or law, no officer or employee of the District shall purchase for and on behalf of the District any material or supplies, goods, wares, merchandise, or services of any kind or character, except through the Procurement Officer or the Procurement Officer's designee, and no voucher, check or other method of payment shall be honored if this procedure is not followed; provided, however, that this Subsection shall not apply to emergency purchases as specifically provided in Subsection X.A.5 of this Policy. The Procurement Officer may delegate in writing funding approval authority to specific staff members; the current delegations are set forth in attached Exhibit 1.
- B. Approval of Purchases:
  1. Except as otherwise provided in this Policy or by law, the Board shall approve all Operating and Maintenance expenditures, including those capitalized general equipment, IT equipment, supplies or services (including professional services) provided under a multi-year contract which the Board has previously approved, and vehicles of the District as part of its approval of the annual budget.
  2. All capital projects that exceed the Manager's approval limit shall be approved by the Board prior to any expenditures made.
  3. The Procurement Officer, and/or any other person designated by the Board to act as the "budget officer" and/or the "financial officer" of the District under the provisions of Utah Code Ann. §§ 17B-1-601 *et. seq.*, may issue payroll checks that are prepared in accordance with a schedule approved by the Board and pay routine expenditures such as utility bills, payroll-related expenses, supplies, materials, and bond payments when due, and make transfers from one fund to another as part of routine bookkeeping procedures.

4. Notwithstanding anything to the contrary in this Policy, the Board will review all District expenditures on a quarterly or more frequent basis.
- E. Availability of Funds: No purchase shall be made and no encumbrance shall be incurred unless funds sufficient to cover the purchase or encumbrance are available and the purchase is approved by the appropriate District officials as herein provided.
- F. Delivery of Goods: No officer or employee of the District shall request any merchant, dealer or other vendor to deliver goods to the District other than in compliance with the requirements of this Policy and pursuant to any required approval from the Board or the Procurement Officer, except in the case of an emergency purchase as provided in Subsection X.A.5 of this Policy.
- G. Cooperative Purchasing and Purchasing Preferences:
1. Cooperative Purchasing: Nothing contained in this Part III. shall be construed to limit the ability of the District to purchase a procurement item from another procurement unit or join with other units of government in centralized or cooperative purchasing plans or systems, with proper authorization, including participating in state or federal public cooperative procurement contracts, as provided in Part 21 of the Act, titled "Interaction Between Procurement Units".
    - a. Cooperative purchasing will be conducted in accordance with the requirements set forth in of the Act<sup>2</sup>.
    - b. In accordance with the Act<sup>3</sup>, the District may obtain procurement items from state cooperative contracts.
      - i. The District may request additional volume discount pricing for large volume orders, provided the state cooperative contractor is willing to offer additional discounts for large volume orders, by issuing a "Request for Price Quotations" to a vendor on a state cooperative contract for the procurement item being purchased. The District may not, however, coerce, intimidate or compel a vendor on a state cooperative contract to offer additional discount pricing.
      - ii. The Request for Price Quotations shall include:
        - (1) A detailed description of the procurement item;
        - (2) The estimated number or volume of procurement items that will be purchased;
        - (3) The period of time that price quotations will be accepted, including the date and time the price quotations will be opened;
        - (4) The manner in which price quotations will be accepted;
        - (5) The place where price quotations shall be submitted; and
        - (6) The period of time the price quotations must be guaranteed.
      - iii. Price quotations shall be kept confidential until the date and time of the opening and may not be disclosed to other vendors on

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<sup>2</sup> Utah Code Ann. § 63G-6a-2105.

<sup>3</sup> Utah Code Ann. § 63G-6a-2105.

state cooperative contracts until after the date and time of the opening. Email quotations are acceptable.

- iv. Price quotations will be opened in the presence of a minimum of two witnesses.
- v. Price quotations will become public at the time of the opening.
- c. A state cooperative contract may not be used for:
  - i. An anti-competitive practice such as:
    - (1) Bid rigging;
    - (2) Steering a contract to a favored vendor;
    - (3) Utilizing auction techniques where price quotations are improperly disclosed and contractors bid against each other's price;
    - (4) Disclosing pricing or other confidential information prior to the date and time of the opening; or
    - (5) Any other practice prohibited by the Act.
  - d. All sales to the District resulting from quotations received under the process conducted in accordance with Subsection E.1.b. will be recorded as usage under the existing state cooperative contract, are subject to the administrative fee associated with the state cooperative contract, and will be reported to the Division of Purchasing and General Services.

- 2. Preference for State Products and Resident Contractors: The Act<sup>4</sup> provides for a reciprocal preference for the providers of procurement items produced, manufactured, mined, grown, or performed in Utah and it provides for a reciprocal preference for resident Utah contractors<sup>5</sup>. In the event more than one equally low preferred bidder or contractor qualifies for the reciprocal preference, the Procurement Officer shall consider the preferred bidders or contractors to be tied and will follow the process specified in the Act<sup>6</sup> and in Subsection VIII.C.14 of this Policy.

#### H. Purchase Records:

- 1. Invoices and Receipts: Invoices prepared by the vendor, cash register receipts and/or other written documentation to substantiate District expenditures will be maintained as part of the District's financial records in accordance with customary procedures for public entities such as the District. Whenever possible, original invoices will be used as supporting documentation for District purchases.
- 2. Penalty for Double Payment: An intentional effort on the part of a supplier to obtain a double payment may serve as the basis for "debarment." Similarly, any intentional effort on the part of a District employee to receive a double reimbursement may result in discipline, including termination.
- 3. Use of Forms: All departments are required to file with the Procurement Officer detailed requisitions for their requirements of supplies, contractual services, materials and equipment.

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<sup>4</sup> Utah Code Ann. § 63G-6a-1002.

<sup>5</sup> Utah Code Ann. § 63G-6a-1003.

<sup>6</sup> Utah Code Ann. § 63G-6a-608.

I. Surplus Property and Salvage:

1. Disposal of Surplus Property:

- a. All surplus property shall be reported to the Board.
- b. The Procurement Officer is authorized to dispose of District surplus property whose salvage value does not exceed \$50,000 and that will not be required for future use. After disposing of surplus property, a description of the property, together with a statement of its replacement value and the consideration received, shall be reported to the Board.
- c. Surplus property whose salvage value exceeds \$50,000 shall be disposed of as approved by the Board.
- d. Surplus property shall be disposed of in exchange for adequate consideration.
- e. Surplus property, sold pursuant to a public action, may be purchased by an employee.

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

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

IV. CONTRACTUAL TERMS

A. Multi-Year Contracts: The District may enter into multi-year contracts in accordance with the Act<sup>7</sup>. In particular, a contract for supplies or services may be entered into for any period of time, up to five years, deemed to be in the best interest of the District; provided that the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Prior to the utilization of a multi-year contract, it should be determined in writing that estimated requirements cover the period of the contract and are reasonably firm and continuing and that a multi-year contract will serve the best interest of the District by encouraging effective competition or otherwise promoting economies in District procurement.

1. In Excess of Five Years: Notwithstanding the foregoing, or anything to the contrary in this Policy, a contract may be entered into for a period in excess of five years, or for a period that is terminable at-will by the District, with or without cause, based upon a written determination by the Procurement Officer, as provided in Section 63G-6a-1204, that:
  - a. A longer period is necessary in order to obtain the procurement item,

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<sup>7</sup> Utah Code Ann. § 63G-6a-1204.

- b. A longer period is customary for industry standards, or
- c. A longer period is in the best interest of the District.

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

- 2. Availability of Funds: As allowed by law or the underlying contract, when funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, a multi-year contract may be canceled.
- 3. Indefinite Term: Based upon a written determination by the Procurement Officer as provided in subparagraph 1, above, with the concurrence of the contracting parties, a contract may be modified to become an indefinite term contract terminable at will by the District.
- 4. Limitations on Use: A multi-year contract may not be used for the design or construction of a facility or for the financing of equipment.

B. Type of Contract:

- 1. Generally: Subject to the limitations of this Section B., any type of contract which will promote the best interest of the District may be used; provided that, if a contract other than a firm fixed price contract will be used, the Procurement Officer must make a written determination as required by the Act<sup>8</sup> that the proposed contractor's accounting system will permit the timely development of all necessary cost data in the form required by the specific contemplated contract type; the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles; and the use of a specified type of contract, other than a firm fixed price contract, is in the best interest of the District taking into consideration the criteria specified in the Act<sup>9</sup>. The various contract types that may be used are identified in the Act<sup>10</sup>.
- 2. Cost-Plus-a-Percentage-of-Cost: As provided in the Act<sup>11</sup>, the District may not enter into a cost-plus-a-percentage-of-cost contract unless the contract form is approved by the Procurement Officer; it is standard practice in the industry to obtain the subject procurement item through a cost plus contract; and any percentage and the method of calculating costs stated in the contract are in accordance with industry standards.
- 3. Cost Reimbursement: A cost reimbursement contract may be used only when a determination is made in writing by the Procurement Officer that such contract is likely to be less costly to the District than any other contract type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract, and the proposed contractor has an adequate accounting system to timely develop cost data and to allocate costs in accordance with generally accepted accounting principles.

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<sup>8</sup> Utah Code Ann. § 63G-6a-1205(3).

<sup>9</sup> Utah Code Ann. § 63G-6a-1205(3)(c).

<sup>10</sup> Utah Code Ann. § 63G-6a-1205(4).

<sup>11</sup> Utah Code Ann. § 63G-6a-1205(5).

- C. Installment Payments: The District may make installment payments in accordance with the Act<sup>12</sup>.

V. SMALL PURCHASES

- A. General: Small purchases shall be made in accordance with the Act<sup>13</sup>. This Part V provides additional requirements and procedures and is to be used in conjunction with the Act.

1. Definition: A "Small Purchase" is a procurement conducted by the District without using a standard procurement process.
2. Thresholds: Small Purchase thresholds are as follows:
  - a. The "Individual Procurement Threshold" is a maximum amount of \$75,000 for a procurement item;
  - b. The "Single Procurement Aggregate Threshold" is a maximum amount of \$75,000 for multiple procurement item(s) purchased from one source at one time; and
  - c. The annual cumulative threshold from the same source is a maximum amount of \$150,000.
3. Approved Vendor List: The District will follow the process described in the Act to develop an approved vendor list<sup>14</sup>, or Part 15 of the Act for the selection of architectural and engineering services.
4. Rotation System: Whenever practicable, the District will use a rotation system or other system designed to allow for competition when using the small purchases process.

B. Small Purchases Threshold for Architectural and Engineering Services:

1. Threshold: The small purchase threshold for architectural or engineering services is a maximum amount of \$100,000 per budget year per vendor.
2. Procedure: Architectural or engineering services may be procured, up to a maximum of \$100,000, by direct negotiation after reviewing the qualifications of a minimum of three architectural or engineering firms.
3. Specifications: The District will include minimum written specifications when using the small purchase threshold for architectural and engineering services.

C. Small Purchases Threshold for Construction Projects:

1. Threshold: The small construction project threshold is a maximum of \$100,000 for direct construction costs, including design and allowable furniture or equipment costs.
2. Procedure: The District will follow the process described in the Act to develop an approved vendor list<sup>15</sup>, or other applicable selection methods described in the Act for construction services.

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<sup>12</sup> Utah Code Ann. § 63G-6a-1208.

<sup>13</sup> Utah Code Ann. § 63G-6a-506.

<sup>14</sup> Utah Code Ann. § 63G-6a-507.



3. Specifications: Minimum specifications will apply when using the small purchases threshold for construction projects.
4. Up to \$30,000: The District may procure small construction projects up to a maximum of \$30,000 by direct award without seeking competitive bids or quotes after documenting that all building code approvals, licensing requirements, permitting and other construction related requirements will be met. The awarded contractor must certify that the contractor is capable of meeting the specifications of the project.
5. From \$30,000 to \$100,000: The District may procure small construction projects costing more than \$30,000 up to a maximum of \$100,000 by obtaining a minimum of two competitive quotes that include minimum written specifications, and will award the work to the contractor with the lowest quote that meets the specifications after documenting that all applicable building code approvals, licensing requirements, permitting and other construction related requirements will be met.

D. Quotes for Small Purchases [for non-professional services]:

1. Below \$10,000: A purchase of goods or services of \$10,000 or less, and not exceeding a cumulative total of \$150,000 from a single vendor in a fiscal year, shall be made in the manner deemed most appropriate by the Procurement Officer.
2. Above \$10,000 to \$50,000: A purchase of goods or services for more than \$10,000 but not exceeding \$50,000, and not exceeding a cumulative total of \$150,000 from a single vendor in a fiscal year, may be awarded after the solicitation, with minimum written specifications, of written price quotations from enough prospective vendors or suppliers to reasonably assure the Procurement Officer that the District received a competitive price.
3. Above \$50,000: For procurement item(s) costing more than \$50,000, the District will conduct an invitation for bids or other procurement process as outlined in the Act.
4. Public Record: The names of the vendors offering quotations or bids and the date and amount of each quotation or bid will be recorded and maintained as a record.

E. Small Purchases of Services of Professionals, Providers, and Consultants:

1. Up to \$100,000: The small purchase threshold for professional service providers and consultants is a maximum amount of \$100,000 per budget year per vendor.
2. Procedure: After reviewing the qualifications of a minimum of two professional service providers or consultants, the District may obtain professional services or consulting services:
  - a. Up to a maximum cost of \$50,000 by direct negotiation; or
  - b. Over \$50,000 up to a maximum of \$100,000 by obtaining a minimum of two quotes.

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<sup>15</sup> Utah Code Ann. § 63G-6a-507.

3. Cost Not Primary: The District need not select the professional service provider presenting the lowest cost quotation, but may instead base the selection on other documented factors such as experience, knowledge and reputation.
- F. Optional Competitive Bidding: Notwithstanding the foregoing, the District may require any acquisition of supplies, materials, equipment, or services to be competitively bid if, in the determination of the Board or the Procurement Officer, such action would be in the best interest of the District.
  - G. Petty Cash: A limited amount of “petty cash” may be maintained at the District office to be used for small purchases that are needed before regular purchasing procedures can be implemented. All petty cash slips or other proof of the amount of the petty cash expenditure must be signed by the employee responsible for the purchase and approved by either the Procurement Officer or the Treasurer.
  - H. Open Charge Accounts: The District, for convenience, may maintain open charge accounts with vendors who regularly provide supplies and materials and may utilize credit cards. Purchases on the account must be approved by the Procurement Officer or an authorized designee prior to the purchase. Receipts are to be maintained for all credit card purchases and vendor statements are to be reconciled against those receipts prior to making credit card payments. Unless there is a dispute arising from the reconciliation or otherwise, or sufficient funds are not immediately available, all credit card charges are to be timely paid so as to avoid finance charges. No open charge account is to be utilized to circumvent the competitive requirements of the Act or this Policy.

## VI. VENDORS

- A. Vendor Lists: General procurement provisions, including approved vendor lists, and small purchases, will be conducted in accordance with the Act<sup>16</sup>. This Part VI provides additional procedures and is to be used in conjunction with the Act.
- B. Approved Vendor Lists:
  1. Thresholds: The District may establish approved vendor lists in accordance with the Act<sup>17</sup>.
    - a. Contracts or purchases from an approved vendor list may not exceed the following thresholds:
      - i. Construction Projects: \$100,000 per contract, for direct construction costs, including design and allowable furniture or equipment costs, awarded using an invitation for bids or a request for proposals;
      - ii. Professional and General Services, including architectural and engineering services: \$100,000; and
      - iii. Information Technology: \$50,000.
    - b. Thresholds for other approved vendor lists may be established by the Board.

<sup>16</sup> Utah Code Ann. §§ 63G-6a-506-507.

<sup>17</sup> Utah Code Ann. §§ 63G-6a-507.

## VII. SPECIFICATIONS

- A. Content: The District will include in solicitation documents specifications for the procurement item(s) being sought.
1. Economy and Competition: Specifications will be drafted with the objective of clearly describing the District's requirements and encouraging competition.
    - a. Specifications will emphasize the functional or performance criteria necessary to meet the needs of the District.
    - b. All specifications prepared for the solicitation of bids or proposals will seek to promote over-all economy and best uses for the purposes intended and encourage competition in satisfying the District's needs, and not be unduly restrictive.
    - c. The requirements of this Section A regarding the purposes and non-restrictiveness of specifications shall apply to all specifications including, but not limited to, those prepared for the District by architects, engineers, designers, and draftsmen.
  2. Conflicts Generally Prohibited: Except as specifically provided in this Subsection 2, persons with a conflict of interest, or who anticipate responding to the proposal for which the specifications are written, may not participate in writing specifications. A person retained to assist in writing specifications, scopes of work, requirements, qualifications, or other components of a solicitation, shall not, at any time during the procurement process, be employed in any capacity by, nor have an ownership interest in, an individual, public or private corporation, governmental entity, partnership, or unincorporated association bidding on or submitting a proposal in response to the solicitation, provided, however, that this restriction shall not apply to a design-build construction project or other procurements as determined in writing by the Procurement Officer.
    - a. Violations of subparagraph VII.A.2 may result in:
      - i. The bidder or offeror being declared ineligible to be awarded the contract;
      - ii. The solicitation being canceled;
      - iii. Termination of an awarded contract;
      - iv. Debarment; or
      - v. Any other action determined to be appropriate by the Board.
  3. Brand Name or Equal Specifications:
    - a. Brand name or equal specifications may be used when:
      - i. An "or equivalent" reference is included in the specification; and,
      - ii. As many other brand names as practicable are also included in the specification.
    - b. Brand name or equal specifications should include a description of the particular design and functional or performance characteristics required.

Specifications unique to the brands shall be described in sufficient detail to enable a vendor to respond with an equivalent product.

- c. When a manufacturer's specification is used in a solicitation, the solicitation will state the minimum acceptable requirements of an equivalent. When practicable, the District will name at least two manufacturer's specifications.

4. Brand Name Sole Source Requirements:

- a. If only one brand can meet the requirement, the District will conduct the procurement in accordance with the Act<sup>18</sup> and solicit from as many providers of the brand as is practicable; and
- b. If there is only one provider that can meet the requirement, the District will conduct the procurement in accordance with the Act<sup>19</sup>.
- c. Notwithstanding the foregoing, or anything to the contrary in this Policy, when the equipment or other procurement items designated by brand name for a construction project are projected to cost no more than ten percent (10%) of the total cost of the construction project, a designated brand may be identified in the specifications and the District will not be required to consider arguably equivalent products.

VIII. COMPETITIVE PROCUREMENT

- A. Request for Information: Before issuing an invitation for bids or a request for proposals, the District may issue a request for information to determine whether to issue an invitation for bids or request for proposals and generate interest in a potential procurement by the District as provided in the Act<sup>20</sup>.

- 1. Use: A request for information may not be used to make a purchase or enter into a contract, but may be used to seek a wide range of information including but not limited to:
  - a. The availability of a procurement item;
  - b. Delivery schedule;
  - c. Industry standards and practices;
  - d. Product specification;
  - e. Training;
  - f. New Technology;
  - g. Capabilities of potential providers of a procurement item; and
  - h. Alternate solutions.

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<sup>18</sup> Utah Code Ann. § 63G-6a-802.

<sup>19</sup> Utah Code Ann. § 63G-6a-802.

<sup>20</sup> Utah Code Ann. §§ 63G-6a-501 thru -505.

2. Confidentiality: A request for information should indicate the procedure to be used for business confidentiality claims and other protection provided by GRAMA.
- B. Bidding Procedure: Competitive Sealed Bidding shall be conducted in accordance with the Act<sup>21</sup> and as provided in this Policy.
1. Invitation for Bids: Except as otherwise provided in this Policy, contracts will generally be awarded by competitive sealed bidding. When a contract is to be awarded by competitive sealed bidding, an invitation for bids will be issued.
    - a. The invitation for bids shall include the information required by the Act<sup>22</sup> and may include a "Bid Form" or forms which provide lines for bidder information such as, but not limited to, the following:
      - i. The bidder's bid price;
      - ii. The bidder's acknowledged receipt of addenda issued by the District;
      - iii. Identification by the bidder of other applicable submissions; and
      - iv. The bidder's signature.
    - b. Bidders may be required to submit descriptive literature and/or product samples to assist in the evaluation of whether a procurement item meets the specifications and other requirements set forth in the invitation for bids.
      - i. Product samples must be furnished free of charge unless otherwise stated in the invitation for bids and, if not destroyed by testing, will upon written request within any deadline stated in the invitation for bids be returned at the bidder's expense. Samples must be labeled or otherwise identified as specified in the invitation for bids.
    - c. Bid, payment and performance bonds, or other security, may be required for procurement items as set forth in the invitation for bids. Bid, payment and performance bonds, or other security, amounts shall be as prescribed by applicable law or be based upon the estimated level of risk associated with the procurement item and may not be increased above the estimated level of risk with the intent to reduce the number of qualified bidders.
    - d. Bids must be based upon a definite calculated price
      - i. "Indefinite quantity contract" means a fixed price contract for an indefinite amount of procurement items to be supplied as ordered by the District and does not require a minimum purchase amount, or provide a maximum purchase limit;
      - ii. "Definite quantity contract" means a fixed price contract that provides for the supply of a specified amount of goods over a

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<sup>21</sup> Utah Code Ann. §§ 63G-6a-601 thru -612.

<sup>22</sup> Utah Code Ann. § 63G-6a-603.

specified period, with deliveries scheduled according to a specified schedule; and

- iii. Bids may not be based on using or referencing another bidder's price, including a percentage discount, a formula, any other amount related to another bidder's price, or conditions related to another bid.

2. Addenda to Invitation for Bids: Prior to the submission of bids, the District may issue addenda which may modify any aspect of the invitation for bids.

- a. Addenda will be distributed within a reasonable time to allow prospective bidders to consider the addenda in preparing bids.

3. Pre-Bid Conferences/Site Visits:

- a. Pre-bid conferences and/or site visits may be conducted to explain the procurement requirements. If so, the time and place of the pre-bid conference/site visit should be stated in the invitation for bids.

- b. A pre-bid conference or a site visit may be mandatory, but only if the invitation for bids states that the conference/site visit is mandatory and provides the location, date and time of the conference/site visit and also states that failure to attend shall result in the disqualification of any bidder that does not attend.

- c. Attendance at a pre-bid conference may be conducted via any of the following as determined at the discretion of the Procurement Officer:

- i. Attendance in person;
- ii. Teleconference participation;
- iii. Webinar participation;
- iv. An audio or video recording; or
- v. Other approved electronic media.

- d. Attendance and participation at all mandatory pre-bid conferences and site visits must be by an authorized representative of the vendor submitting a bid and as may be further specified in the invitation for bids.

- e. The District will maintain an attendance log including the name of each attendee, the firm the attendee is representing, the attendee's contact information, and any documents distributed to the attendees; and the District may maintain minutes of the pre-bid conference/site visit.

- f. The District may, as appropriate, publish as an addendum to the solicitation:

- i. The attendance log;
- ii. Minutes of the pre-bid conference or site visit and any documents distributed to the attendees at the pre-bid conference or site visit; or

- iii. Any oral modification made to any of the solicitation documents, which shall be reduced to writing.
4. Public Notice: Public notice of the invitation for bids is to be given a reasonable time prior to the date set forth therein for the opening of bids, in accordance with this Section C. The notice may include publication in a newspaper of general circulation or on the District's website a reasonable time prior to the bid opening.
5. Bids and Modifications to a Bid Received After the Due Date and Time:
  - a. Bids and modifications to a bid submitted electronically or by physical delivery after the established due date and time, will not be accepted for any reason, except as provided under d., below.
  - b. When submitting a bid or modification electronically, bidders must allow sufficient time to complete the online forms and upload documents. The solicitation will end at the closing time posted in the electronic system, if applicable. If a bidder is in the process of uploading a bid when the closing time arrives, the bid or modification of the bid will not be accepted.
  - c. When submitting a bid or modification to a bid by physical delivery (U.S. mail, courier service, hand-delivery, or other physical means) bidders are solely responsible for meeting the deadline. Delays caused by a delivery service or other physical means will not be considered as an acceptable reason for a bid or modification to a bid being late.
    - i. All bids or modifications to bids received by physical delivery will be date and time stamped by the District.
  - d. To the extent that an error on the part of the District results in a bid or modification to a bid not being received by the established due date and time, the bid or modification to a bid will be accepted by the District and be deemed as being on time.
6. Opening and Recording of Bids: Bids will be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and any other relevant information specified by this Section C, together with the name of each bidder, shall be recorded. The record and each bid shall be open to public inspection as allowed by law.
7. Errors in Bids: The following shall apply to the correction or withdrawal of an unintentionally erroneous bid, or to the cancellation of an award or contract that is based on an unintentionally erroneous bid. A decision to permit the correction or withdrawal of a bid or the cancellation of any award or contract shall be explained in a written document signed by the Procurement Officer.
  - a. Errors attributed to a bidder's judgment may not be corrected or withdrawn.
  - b. Provided there is no change in bid pricing or the cost evaluation formula, errors not attributed to a bidder's judgment may be corrected if, in the opinion of the Procurement Officer, it is in the best interest of the District and correcting the error maintains the fair treatment of other bidders.
  - c. The Procurement Officer shall approve or deny, in writing, a bidder's request to correct or withdraw a bid.

- d. Corrections or withdrawal of bids shall be conducted in accordance with the Act<sup>23</sup>.

8. Errors Discovered After the Award of Contract:

- a. Errors discovered after the award of a contract may be corrected only if the Procurement Officer determines that correction of the error does not violate the requirements of the Act or this Policy.
- b. Any such correction must be supported in writing by the Procurement Officer.

9. Re-solicitation of a Bid:

- a. Re-solicitation of a bid may occur if the Procurement Officer determines that:
  - i. A material change in the scope of work or specifications has occurred;
  - ii. Procedures outlined in the Act were not followed;
  - iii. Additional public notice is desired;
  - iv. There was a lack of adequate competition; or
  - v. Any other reason, in the opinion of the Procurement Officer, that re-solicitation is in the best interest of the District.
- b. Re-solicitation may not be used to avoid awarding a contract to a qualified vendor in an attempt to steer the award of a contract to a favored vendor.

10. Bid Award: Unless the District elects to cancel the procurement or re-solicit bids, contracts are to be awarded with reasonable promptness by written notice to the lowest responsive and responsible bidder whose bid meets the requirements and objective criteria described in the invitation for bids.

- a. Bids shall be based on the lowest bid for the entire term of the contract, excluding renewal periods and, unless an exception is authorized in writing by the Procurement Officer, cost may not be divided or evaluated on any other basis than the entire term of the contract, excluding renewal periods.

11. Only One Bid Received:

- a. If only one responsive and responsible bid is received in response to an invitation for bids, including multiple stage bidding, an award may be made to the single bidder if the Procurement Officer determines that the bid submitted is fair and reasonable and in the best interest of the District and other prospective bidders had a reasonable opportunity to respond, or there is not sufficient time for re-solicitation. Otherwise, the bid may be rejected and:
  - i. A new invitation for bids solicited;

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<sup>23</sup> Utah Code Ann. § 63G-6a-605.



- ii. The procurement canceled; or
- iii. The procurement may be conducted as a sole source under the Act<sup>24</sup>.

12. Multiple or Alternate Bids:

- a. Multiple or alternate bids will not be accepted, unless otherwise specifically required or allowed in the invitation for bids.

13. Methods to Resolve Tie Bids:

- a. In accordance with the Act<sup>25</sup>, in the event the lowest bids result in a tie, the contract will be awarded to the responsive and responsible bidder that qualifies as a Utah resident bidder, provided that bidder indicated on the invitation to bid form that it is a Utah resident bidder.
- b. If a Utah resident bidder is not identified, the preferred method for resolving tie bids is for the Procurement Officer to toss a coin in the presence of a minimum of three witnesses, with the firm first in alphabetical order being heads. However, other methods to resolve a tie bid described in the Act<sup>26</sup> may be used as deemed appropriate by the Procurement Officer.

14. Notice of Award:

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

15. Multiple Stage Bidding Process: Multiple stage bidding shall be conducted in accordance with the requirements set forth in the Act<sup>27</sup>.

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

C. Competitive Sealed Proposals: Whenever the Procurement Officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the District, a contract may be entered into using competitive sealed proposals. A request for proposals ("RFP") shall be conducted in accordance with the requirements set forth in the Act<sup>28</sup> and as provided below.

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<sup>24</sup> Utah Code Ann. § 63G-6a-802.

<sup>25</sup> Utah Code Ann. § 63G-6a-608.

<sup>26</sup> Utah Code Ann. § 63G-6a-608.

<sup>27</sup> Utah Code Ann. § 63G-6a-609.

<sup>28</sup> Utah Code Ann. §§ 63G-6a-701 thru -711.

1. Content of the Request for Proposals:

- a. In addition to the requirements set forth in the Act<sup>29</sup>, the RFP shall include:
  - i. A description of the format that offerors are to use when submitting a proposal, including any required forms; and
  - ii. Instructions for submitting price.
- b. The District is responsible for all content contained in the RFP solicitation documents, including:
  - i. Reviewing all schedules, dates, and timeframes;
  - ii. Approving content of attachments;
  - iii. Assuring that information contained in the solicitation documents is public information; and
  - iv. Understanding the scope of work and all evaluation criteria, requirements, factors, and formulas to be used in determining the scoring of proposals.

2. Multiple Stage RFP Process:

- a. In addition to the requirements set forth in the Act<sup>30</sup>, a multiple stage RFP shall include:
  - i. A description of the stages and the criteria, and of the scoring that will be used to evaluate proposals at each stage; and
  - ii. The methodology used to determine which proposals shall be disqualified from additional stages.

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

- a. Offerors requesting exceptions and/or additions to the standard terms and conditions published in the RFP must include the exceptions and/or additions with the proposal response.
- b. Exceptions and/or additions submitted after the date and time for receipt of proposals will not be considered unless there is only one offeror that responds to the RFP, the exceptions and/or additions have been approved by the Procurement Officer, and it is determined by the Procurement Officer that it is not beneficial to the District to republish the solicitation.
- c. Offerors may not submit requests for exceptions and/or additions by reference to a vendor's website or URL.
- d. The District may refuse to negotiate exceptions and/or additions:
  - i. That are determined to be excessive;

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<sup>29</sup> Utah Code Ann. § 63G-6a-703.

<sup>30</sup> Utah Code Ann. § 63G-6a-710.

- ii. That are inconsistent with similar contracts of the District;
  - iii. To warranties, insurance or indemnification provisions that are deemed to be necessary to protect the District;
  - iv. Where the solicitation specifically prohibits exceptions and/or additions; or
  - v. That are not in the best interest of the District, as determined by the Procurement Officer.
- e. If negotiations are permitted, the District may negotiate exceptions and/or additions with offerors, beginning in order with the offeror submitting the fewest exceptions and/or additions to the offeror submitting the greatest number of exceptions and/or additions. Contracts may become effective as negotiations are completed.
  - f. If, in the negotiation of exceptions and/or additions with a particular offeror, an agreement is not reached after a reasonable amount of time, as determined by the Procurement Officer, the negotiations may be terminated, a contract will not be awarded to that offeror, and the District may negotiate with the next eligible offeror.

4. Records:

- a. Any request that a record is protected or includes a trade secret or commercial information is subject to the provisions of GRAMA.

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

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

6. Pre-proposal Conferences/Site Visits:

- a. Pre-proposal conferences and/or site visits may be conducted to explain the procurement requirements. If so, the time and place of the pre-proposal conference/site visit shall be stated in the RFP.
- b. A pre-proposal conference or a site visit may be mandatory, but only if the RFP states that the pre-proposal conference/site visit is mandatory

and provides the location, date and time of the conference/site visit and also states that failure to attend shall result in the disqualification of any offeror that does not attend.

- c. Attendance at a pre-proposal conference may be conducted via any of the following as determined at the discretion of the Procurement Officer:
  - i. Attendance in person;
  - ii. Teleconference participation;
  - iii. Webinar participation;
  - iv. An audio or video recording; or
  - v. Other approved electronic media
- d. Attendance and participation at all mandatory pre-proposal conferences and site visits must be by an authorized representative of the proposer submitting a proposal and as may be further specified in the RFP.
- e. The District will maintain an attendance log including the name of each attendee, the firm the attendee is representing, the attendee's contact information, and any documents distributed to the attendees; and the District may maintain minutes of the pre-proposal conference/site visit.
- f. The District may, as appropriate, publish as an addendum to the solicitation:
  - i. The attendance log;
  - ii. Minutes of the pre-proposal conference or site visit and any documents distributed to the attendees at the pre-proposal conference or site visit; or
  - iii. Any oral modification made to any of the solicitation documents, which shall be reduced to writing.

7. Addenda to Request for Proposals:

- a. Addenda to a Request for Proposals may be made for the purpose of making changes to:
  - i. The scope of work;
  - ii. The schedule;
  - iii. The qualification requirements;
  - iv. The criteria;
  - v. The weighting; or
  - vi. Other requirements of the RFP.
- b. Addenda shall be published within a reasonable time prior to the deadline that proposals are due, to allow prospective proposers to

consider the addenda in preparing proposals. Publication at least 3 calendar days prior to the deadline that proposals are due shall be deemed a reasonable time. Minor addenda and urgent circumstances may justify a shorter period of time in the discretion of the Procurement Officer.

8. Modification or Withdrawal of Proposal Prior to Deadline: A proposal may be modified or withdrawn by the proposer prior to the established due date and time for responding.
9. Proposals and Modifications, Delivery and Time Requirements: To the extent that an error on the part of the District results in a proposal or modification to a proposal not being received by the established due date and time, the proposal or modification to a proposal shall be accepted by the District and be deemed as being on time. Otherwise, the following shall apply:
  - a. Proposals and modifications to a proposal submitted electronically or by physical delivery after the established due date and time, will not be accepted for any reason, except as provided under d., below.
  - b. When submitting a proposal or modification to a proposal electronically, proposers 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 a proposer is in the process of uploading a proposal when the closing time arrives, the proposal or modification to a proposal will not be accepted.
  - c. When submitting a proposal or modification to a proposal by physical delivery (U.S. mail, courier service, hand-delivery, or other physical means) proposers are solely responsible for meeting the deadline. Delays caused by a delivery service or other physical means will not be considered as an acceptable reason for a proposal or modification to a proposal being late.
    - i. All proposals or modifications to proposals received by physical delivery will be date and time stamped by the District.
  - d. To the extent that an error on the part of the District results in a proposal or modification to a proposal not being received by the established due date and time, the proposal or modification to a proposal will be accepted by the District and be deemed as being on time.
10. Errors in Proposals: The following shall apply to the correction or withdrawal of an unintentionally erroneous proposal, or to the cancellation of an award or contract that is based on an unintentionally erroneous proposal. A decision to permit the correction or withdrawal of a proposal or the cancellation of an award or a contract shall be explained in a written document signed by the Procurement Officer.
  - a. Errors attributed to a proposer's judgment may not be corrected.
  - b. Unintentional errors not attributed to a proposer's judgment may be corrected if, in the opinion of the Procurement Officer, it is in the best interest of the District and correcting the error maintains the fair treatment of other proposers.

- c. Unintentional errors discovered after the award of a contract may be corrected only if the Procurement Officer determines that correction of the error does not violate the requirements of the Act or this Policy.

11. Evaluation of Proposals:

- a. The evaluation of proposals shall be conducted in accordance with Part 7 of the Act.
- b. An evaluation committee may ask questions of proposers to clarify proposals, by interview or by questions that are submitted and answered in writing. The record of questions and answers shall be maintained in the file.
- c. The evaluation of cost in an RFP shall be based on the entire term of the contract, excluding renewal periods.
  - i. Unless an exception is authorized in writing by the Procurement Officer, cost should not be artificially divided or evaluated on any other basis than the entire term of the contract, excluding renewal periods.
  - ii. Whenever practicable, the evaluation of cost should include maintenance and service agreements, system upgrades, apparatuses, and other components associated with the procurement item.

12. Correction or Withdrawal of Proposal:

- a. In the event a proposer submits a proposal that on its face appears to be impractical, unrealistic or otherwise in error, the Procurement Officer may contact the proposer to confirm the proposal, or to permit a correction of the proposal, or to permit withdrawal of the proposal, in accordance with the Act<sup>31</sup>.
- b. Proposers may not correct errors, deficiencies, or incomplete responses in a proposal that has been determined to be not responsive or not responsive, or that does not meet the mandatory minimum requirements stated in the request for proposals in accordance with the Act<sup>32</sup>.

13. Interviews and Presentations:

- a. Interviews and presentations may be held as outlined in the RFP.
- b. Proposers invited to interviews or presentations shall be limited to those proposers meeting minimum requirements specified in the RFP.
- c. Representations made by the proposer during interviews or presentations shall become an addendum to the proposer's proposal and shall be documented. Representations must be consistent with the proposer's original proposal and may only be used for purposes of clarifying or filling in gaps in the proposer's proposal.

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<sup>31</sup> Utah Code Ann. § 63G-6a-706.

<sup>32</sup> Utah Code Ann. § 63G-6a-704.

- d. The Procurement Officer shall establish a date and time for the interviews or presentations and shall notify eligible proposer of the procedures. Interviews and presentations will be at the proposer's expense.
14. Best and Final Offers: Best and final offers (BAFO) may be requested in accordance with the Act<sup>33</sup> and this Policy.
- a. The BAFO process is an optional step in the evaluation phase of the request for proposals process in which offerors are requested or given an opportunity to modify their proposals. An evaluation committee may request BAFO when:
    - i. No single proposal addresses all of the specifications;
    - ii. All or a significant number of the proposals are unclear;
    - iii. Additional information is needed for the evaluation committee to make a decision;
    - iv. Differences between proposals in one or more categories are too close to distinguish;
    - v. Proposals are unclear and the evaluation committee requires further clarification; or
    - vi. In the discretion of the Procurement Officer, cost proposals appear too high.
  - b. Only offerors meeting the minimum qualifications or scores described in the RFP are eligible to respond to a request for BAFO.
  - c. Proposal modifications submitted in response to a request for BAFO may address only the specific issues and/or sections of the RFP described in the request for BAFO.
    - i. An offeror may not use the BAFO process to correct other deficiencies in the offeror's proposal not called for in the request for BAFO issued by the District.
  - d. When a request for BAFO is issued to reduce cost proposals, offerors shall submit itemized cost proposals which clearly indicate the tasks or scope reductions that can be implemented to bring costs within budget.
    - i. The cost information of one offeror may not be disclosed to a competing offeror during the BAFO process and such cost information shall not be shared with other offerors until after the contract has been awarded.
    - ii. The District shall ensure that auction tactics are not used in the discussion process, including discussing and comparing the costs and features of other proposals.

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<sup>33</sup> Utah Code Ann. § 63G-6a-707.5.

- e. The BAFO process may be conducted only during the evaluation phase of the RFP process and may not be conducted as part of the contract negotiation process.
- f. The District may not use the BAFO process to allow offerors a second opportunity to propose on the entire RFP.
- g. If a proposal modification is made orally during the interview or presentation process, the modification must be confirmed in writing.
- h. A request for BAFO shall:
  - i. Comply with all public notice requirements provided in the Act<sup>34</sup>;
  - ii. Include a deadline for submission that allows offerors a reasonable opportunity to prepare and submit their responses;
  - iii. Indicate how proposal modifications in response to a request for BAFO will be evaluated;
- i. If an offeror does not submit a BAFO, its immediate previous proposal will be considered as its BAFO;
- j. Unsolicited BAFO will not be accepted.

15. Cost-benefit Analysis Exception: CM/GC

- a. A cost-benefit analysis is not required if the contract is awarded based solely on the qualifications of the construction manager/general contractor and on the management fee described in the Act<sup>35</sup>, provided:
  - i. A competitive process is maintained by the issuance of a request for proposals that requires the offeror to provide, at a minimum:
    - (1) A management plan;
    - (2) References;
    - (3) Statements of qualifications; and
    - (4) A management fee which contains only the following:
      - (i) Preconstruction phase services;
      - (ii) Monthly supervision fees for the construction phase; and
      - (iii) Overhead and profit for the construction phase.
- b. A cost-benefit analysis conducted under the Act<sup>36</sup> shall be based on the entire term of the contract, excluding any renewal periods, and may take life-cycle costs into consideration.

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<sup>34</sup> Utah Code Ann. § 63G-6a-406.

<sup>35</sup> Utah Code Ann. § 63G-6a-708.

<sup>36</sup> Utah Code Ann. § 63G-6a-708.



- c. The evaluation committee may, as described in the solicitation, weight and score the management fee as a fixed rate or a fixed percentage of the estimated contract value.
- d. The awarded contract must be in the best interest of the District.

16. Only One Proposal Received:

- a. If only one proposal is received in response to a request for proposals, the evaluation committee may conduct a review to determine if:
  - i. The proposal meets the minimum requirements;
  - ii. Pricing and terms are reasonable; and
  - iii. The proposal is in the best interest of the District.
- b. If the evaluation committee determines that the proposal meets the minimum requirements, pricing and terms are reasonable, and the Procurement Officer determines that the proposal is in the best interest of the District, the District may make an award.
- c. If an award is not made, the District either may cancel the procurement or resolicit for the purpose of obtaining additional proposals.

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

- a. In order to avoid analyzing proposals that cannot be considered for award, either the evaluation committee or the Procurement Officer, prior to distributing copies of proposals to the evaluation committee, may conduct an initial review of any applicable pass/fail minimum requirements set forth in the RFP to determine whether the proposals are responsive and responsible or are in violation of the Act or this Policy. The evaluation committee should not evaluate proposals deemed non-responsive or non-responsible or that have been disqualified for a violation of the Act or this Policy. Examples of pass/fail minimum requirements include, but are not limited to:
  - i. Timeliness of receipt of the proposal;
  - ii. Qualification;
  - iii. Certification;
  - iv. Licensing;
  - v. Experience;
  - vi. Compliance with state or federal regulation;
  - vii. Services provided;
  - viii. Product availability;
  - ix. Equipment; and
  - x. Other pass/fail minimum requirements set forth in the RFP.

- b. The evaluation and scoring of proposals in the RFP process shall be conducted in accordance with the following procedures:
  - i. Prior to the scoring of proposals, the Procurement Officer or the Chair of the evaluation committee will meet with the evaluation committee and any staff members who will have access to the proposals, to:
    - (1) Discuss the evaluation and scoring process to ensure that each committee member has a clear understanding of the scoring process and how points will be assigned;
    - (2) Discuss requirements regarding conflicts of interest, the appearance of impropriety, and the importance of confidentiality;
    - (3) Discuss the scoring sheet and evaluation criteria set forth in the RFP; and
    - (4) Provide a copy of relevant portions of the Act and/or this Policy.
  - ii. Once the proposals have been received and it is clear which proposers will be involved in the RFP process, each member of the evaluation committee may be asked to sign a written statement certifying that he/she does not have a conflict of interest, as set forth in the Act<sup>37</sup> and in this Policy.
- c. Unless an exception is authorized by the Procurement Officer, in order to avoid cost influencing the evaluation committee's scoring of non-price criteria, in accordance with the Act<sup>38</sup>, costs may not be revealed to the evaluation committee until after the committee has finalized its scoring on all other technical non-price criteria stated in the RFP. The cost proposal shall be delivered to an individual (the "Cost Evaluator") who is designated by the Procurement Officer and who is independent of the evaluation committee.
- d. After receipt of proposals, each committee member shall independently read and score each proposal based on the technical non-price criteria set forth in the RFP to assess the completeness, quality, and desirability of each proposal.
  - i. Proposals must be evaluated solely on the criteria stated in the RFP.
    - (1) Past performance ratings and references may be considered if listed as evaluation criteria in the RFP.
    - (2) Personal favoritism for a vendor or bias against a vendor cannot be considered in scoring proposals, other than a comparison to the criteria stated in the RFP.

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<sup>37</sup> Utah Code Ann. § 63G-6a-707.

<sup>38</sup> Utah Code Ann. § 63G-6a-707.

- ii. Evaluators are encouraged to request technical support from the Procurement Officer when conducting their independent assessments and scoring.
- iii. After the proposals have been evaluated and scored by the individual committee members, the entire committee shall meet to discuss the proposals, to conduct interviews if applicable; to resolve any factual disagreements; and to arrive at the final scoring. All committee members must be present in person or by electronic means to take any official action.
  - (1) Although a committee member does not attend an evaluation committee meeting either in person or by electronic means, the remainder of the committee may take official action, provided there are at least three evaluation committee members remaining.
- iv. If there are mandatory minimum requirements, those proposers not meeting the requirements will be eliminated from consideration.
- v. During committee discussions, each member may change the member's initial scoring. If additional information or clarification is needed from an offeror, the committee may, with approval of the Procurement Officer, request information or clarification from an offeror. Such request will only be approved if it can be done in a manner that is fair to all proposers.
- vi. At any time during the evaluation process, the evaluation committee may, with the approval of the Procurement Officer, request BAFO from responsible and responsive proposers and evaluate those offers in accordance with the Act<sup>39</sup> and this Policy.
- vii. Each evaluation committee member shall submit a completed scoring sheet, signed and dated by the evaluation committee member.
- e. The evaluation committee may tally the final scores for criteria other than cost to arrive at a score by either of the following methods:
  - i. Total of all of the points given by individual committee members; or
  - ii. An average of the individual scores.
- f. The evaluation committee shall submit to the Cost Evaluator its final recommended scores for all criteria other than cost.
- g. The District shall follow the procedures set forth in the Act<sup>40</sup> pertaining to the following:

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<sup>39</sup> Utah Code Ann. § 63G-6a-708.

<sup>40</sup> Utah Code Ann. § 63G-6a-707(5).

- i. Reviewing the evaluation committee's final recommended scores for each proposal for all criteria other than cost, which shall be done by the Chair of the evaluation committee;
  - ii. Scoring cost based on the applicable scoring formula, which shall be done by the Cost Evaluator; and
  - iii. Calculating the total combined score for each responsive and responsible proposal, which shall be done by the Cost Evaluator.
- h. The Chair of the evaluation committee shall prepare the cost justification statement and any applicable cost-benefit analysis in accordance with the Act<sup>41</sup>.
- i. The Procurement Officer may replace any member of the evaluation committee or reconstitute the committee to cure an impropriety in any manner the Procurement Officer deems appropriate. If the impropriety cannot be cured by replacing a committee member, then a new evaluation committee may be appointed by the Procurement Officer or the procurement may be cancelled.
- j. Nothing in this Policy shall preclude the Procurement Officer from serving on an evaluation committee.

18. Criteria for Scoring Other Than Cost:

- a. Scoring of evaluation criteria other than cost, for proposals apparently meeting the mandatory minimum requirements stated in an RFP, shall be based on a one through five point scoring system.
- b. Points shall be awarded to each applicable evaluation category as set forth in the RFP, which may include among other topics:
  - i. Technical specifications;
  - ii. Qualifications and experience;
  - iii. Programming;
  - iv. Design;
  - v. Time, manner, or schedule of delivery;
  - vi. Quality or suitability for a particular purpose;
  - vii. Financial solvency;
  - viii. Management and methodological plan; and
  - ix. Other requirements specified in the RFP.
- c. Scoring Methodology:
  - i. Five points (Excellent): The proposal addresses and exceeds all of the requirements described in the RFP.

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<sup>41</sup> Utah Code Ann. § 63G-6a-708.

- ii. Four points (Very Good): The proposal addresses all of the requirements described in the RFP and, in some respects, exceeds them.
  - iii. Three points (Good): The proposal addresses all of the requirements described in the RFP in a satisfactory manner.
  - iv. Two points (Fair): The proposal addresses the requirements described in the RFP in an unsatisfactory manner.
  - v. One point (Poor): The proposal addresses the requirements inaccurately or poorly.
  - vi. Zero points (Fail): The proposal fails to address the requirements described in the RFP.
19. Minimum Score Thresholds: The District may establish minimum score thresholds for any RFP procurement to advance proposals from one stage in the RFP process to the next, including contract award.
- a. If minimum score thresholds are established for a procurement, the RFP must clearly describe the minimum score threshold that proposals must achieve in order to advance to the next stage in the RFP process or to be awarded a contract.
  - b. Minimum score thresholds may be based on but are not limited to:
    - i. Minimum scores for each evaluation category;
    - ii. The total of each minimum score in each evaluation category based on total points available; or
    - iii. A combination of (i) and (ii).
  - c. Minimum score thresholds may not be based on:
    - i. A natural break in scores that was not defined and set forth in the RFP; or
    - ii. A predetermined number of offerors.
20. Evaluation Committee Members Required to Exercise Independent Judgment:
- a. Evaluation committee members are expected to exercise independent judgment in a manner that is not dependent on anyone else's opinion or desires. As such, committee members must not allow their scoring to be influenced by another person's wishes that additional or fewer points be awarded to a particular offeror.
  - b. Evaluators may seek to increase their knowledge before scoring by asking questions and seeking appropriate information from the Procurement Officer. Otherwise, evaluators should not discuss proposals or the scoring of proposals with other persons who are not on the evaluation committee.
  - c. The exercise of independent judgment applies not only to possible inappropriate influences from outside the evaluation committee, but also

to inappropriate influences from within the committee. It is acceptable for there to be discussion and debate within the committee regarding how well a proposal meets the evaluation criteria. However, open discussion and debate may not be allowed to lead to coercion or intimidation on the part of one committee member in an attempt to influence the scoring of another committee member.

- i. Evaluators may not act on their own or in concert with another evaluation committee member to steer an award to a favored vendor or to disfavor a particular vendor.
- d. Evaluators are required to report to the Procurement Officer any attempt by another committee member to improperly influence the scoring to favor or disfavor a particular offeror.
- e. If an evaluator believes that the evaluator's own independence has been compromised, the evaluator shall notify the Procurement Officer in writing, and the Procurement Officer shall determine whether the evaluator shall be excused from the evaluation process. The Procurement Officer's decision shall be written and a copy placed in the contract file.

21. Professional Services other than Architecture, Engineering and Surveying:

- a. A contract with a consultant providing professional or technical services, such as accounting and legal services, may be awarded using the RFP procedure or as a small purchase under Part V of this Policy. The award of a contract for engineering, architectural or surveying services is governed by Part XV of this Policy.

22. Publicizing Awards: The District shall follow the Act<sup>42</sup>, GRAMA, and this Policy whenever it discloses any contract proposal, proposal rankings, names of members of an evaluation committee, final scores or average scores used by an evaluation committee to make a procurement selection or award (in no event will the names of the individual scorers be associated with their individual scores or rankings), and written justification statements supporting the selection.

- a. The following may impair the District's procurement proceedings or give an unfair advantage to a person proposing to enter into a contract or agreement with the District, and may not be disclosed by the District to the public, except as otherwise required by GRAMA:
  - i. The names of individual scorers/evaluators in relation to their individual scores or rankings;
  - ii. Any individual scorer's/evaluator's notes, drafts, or working documents;
  - iii. Non-public financial statements; and
  - iv. Past performance and reference information, which is not provided by the offeror and which is obtained as a result of the efforts of the District. To the extent such past performance or reference information is included in the written justification statement, it is subject to public disclosure.

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<sup>42</sup> Utah Code Ann. § 63G-6a-709.5.

23. Timing of Rejection: As provided in the Act<sup>43</sup>, the evaluation committee may, at any time during the RFP process, recommend to the Procurement Officer that, subject to the Officer's written approval, a proposal be rejected based on a determination that the submitter of the proposal is not responsible or the proposal is not responsive. As such, the evaluation committee may make a determination that a proposal is nonresponsive or not responsible at any time even if the proposal initially passed the pass/fail review mentioned in Section VIII.E.18.a.

D. Conformity to Solicitation Requirements:

1. Rejection:

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

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

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

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

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<sup>43</sup> Utah Code Ann. § 63G-6a-704.

E. Unreasonable or Unbalanced Pricing:

1. Rejection:

- a. Any bid or offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price. Unreasonableness of price includes not only the total price of the bid or offer, but also the prices for individual line items.
- b. Any bid or offer may be rejected if the prices for any line item are materially unbalanced. Unbalanced pricing may increase performance risk and could result in payment of unreasonably high prices. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. The greatest risks associated with unbalanced pricing occur when:
  - i. Startup work, mobilization, procurement item sample production or testing are separate line items;
  - ii. Base quantities and optional quantities are separate line items; or
  - iii. The evaluated price is the aggregate of estimated quantities to be ordered under separate line items of an indefinite-delivery contract.
- c. All bids or offers with separately priced line items or subline items may be analyzed to determine if the prices are unbalanced. If cost or price analysis techniques indicate that an offer is unbalanced, the District shall:
  - i. Consider the risks to the District associated with the unbalanced pricing in determining the competitive range and in making the source selection decision; and
  - ii. Consider whether award of the contract will result in paying unreasonably high prices for contract performance.
- d. A bid or offer may be rejected if the Procurement Officer determines that the lack of balance poses an unacceptable risk to the District.

F. Rejection for Nonresponsibility or Nonresponsiveness:

1. Nonresponsible Bidder or Offeror: Subject to the Act<sup>44</sup>, the Procurement Officer shall reject a bid or offer from a bidder or offeror that is determined to be nonresponsible. A responsible bidder or offeror is defined in the Act<sup>45</sup>. The unreasonable failure of a bidder or offeror to supply information promptly in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility of that bidder or offeror.

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<sup>44</sup> Utah Code Ann. § 63G-6a-903.

<sup>45</sup> Utah Code Ann. § 63G-6a-103.



2. Nonresponsive Offer: In accordance with the Act<sup>46</sup>, the Procurement Officer may not accept a bid or proposal that is not responsive. Responsiveness is defined in the Act<sup>47</sup>.
3. Bid Security Failure: When bid security is required and a bidder fails to furnish the security in accordance with the requirements of the invitation for bids, the bid shall be rejected.
4. Documentation: The originals of all rejected bids, offers, or other submissions, and all written findings with respect to such rejections, shall be made part of the procurement file and may be available for public inspection as permitted by GRAMA.

G. Rejection for Suspension/Debarment:

Bids, offers, or other submissions received from any vendor that is suspended, debarred, or otherwise ineligible as of the due date for receipt of bids, proposals, or other submissions shall be rejected.

IX. CANCELLATION, REJECTION AND DEBARMENT

A. General Provisions:

1. Cancellation: An Invitation for Bids, a Request for Proposals, or other solicitation may be canceled prior to the deadline for receipt of bids, proposals, or other submissions, when it is in the best interest of the District as determined by the Procurement Officer. In the event a solicitation is cancelled, the reasons for cancellation shall be made part of the procurement file and may be available for public inspection as permitted by GRAMA, and the District may:
  - a. Re-solicit new bids or proposals using the same or revised specifications; or
  - b. Withdraw the requisition for the procurement item(s).
2. Rejection of Bids and Proposals: Any or all bids or competitive sealed proposals may be rejected in whole or in part when doing so is deemed by the Procurement Officer to be in the best interest of the District, and the District may, in its discretion, re-invite bids or re-solicit competitive sealed proposals.
  - a. After a notice of award has been issued, but before a written contract between the successful vendor and the District has been signed, the District may cancel the notice of award based upon information which, if it had been known prior to the issuance of the notice of award, would have been cause for the rejection of the otherwise successful bid or proposal.
3. Documentation: The reason(s) for cancellation or rejection shall be part of the contract file and may be available for public inspection pursuant to GRAMA.

B. Re-solicitation:

1. No Response: In the event there is no response to an initial solicitation, the Procurement Officer may:

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<sup>46</sup> Utah Code Ann. § 63G-6a-604(3).

<sup>47</sup> Utah Code Ann. § 63G-6a-103.

- a. Contact the known supplier community to determine why there were no responses to the solicitation;
  - b. Research the potential vendor community; and,
  - c. Based upon the information obtained under (a) and (b), modify the solicitation documents.
- 2. Inadequate Supplemental Response: If the District has modified the solicitation documents and, after the re-issuance of a solicitation, there is still no competition or there is insufficient competition, the Procurement Officer may:
  - a. Further modify the procurement documents; or,
  - b. Cancel the requisition for the procurement item(s).
- C. Cancellation Before Award: When it is determined before award but after opening that the specifications, scope of work or other requirements contained in the solicitation documents were not met by any bidder or offeror, the solicitation shall be cancelled.
  - 1. Determination: Solicitations may be cancelled before award but after opening all bids or offers when the Procurement Officer determines in writing that:
    - a. Inadequate or ambiguous specifications were cited in the solicitation;
    - b. The specifications in the solicitation should be revised;
    - c. The procurement item(s) being solicited are no longer required;
    - d. The solicitation did not provide for consideration of all factors of cost to the District, including but not limited to cost of transportation, warranties, service and maintenance;
    - e. Bids or offers received indicate that the needs of the District might be satisfied by a less expensive procurement item differing from that in the solicitation;
    - f. Except as provided in the Act<sup>48</sup>, all otherwise acceptable bids or offers received are at unreasonable prices, or only one bid or offer is received and the Procurement Officer cannot determine the reasonableness of the bid price or cost proposal;
    - g. The responses to the solicitation were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or
    - h. No responsive bid or offer has been received from a responsible bidder or offeror;
- D. Alternative to Cancellation: In the event administrative difficulties are encountered before award but after the deadline for submissions, that may delay the award beyond the bidders' or offerors' acceptance periods, the bidders or offerors may be requested, before the expiration of their bids or offers, to extend in writing the acceptance period (with the consent of sureties, if any) in order to avoid the need for cancellation.

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<sup>48</sup> Utah Code Ann. § 63G-6a-607.

- E. Continuation of Need: If the solicitation has been cancelled for the reasons specified in Subsection C.1.f., g or h, above, and the Procurement Officer has made the determination required under Subsection C., and the District has an existing contract, the District may permit an extension of the existing contract under the Act<sup>49</sup>.

X. EXCEPTIONS – PROCUREMENT WITHOUT COMPETITION

- A. Contracts Awarded Without Competition: The Procurement Officer, may determine that a specific contract for a supply, service or construction item should be awarded without receipt or review of competitive bids or proposals if one of the circumstances stated in 1 through 6, below, exists. In the event that a contract is awarded without competition for one of these reasons, a written explanation shall be made of both the reason for purchasing or contracting without competition and of the basis for the selection of the contractor and/or supplier. With this written explanation, a record containing the contractor's or supplier's name, the amount and type of the contract, the total dollar value of the procurement item including, when applicable, the actual or estimated full life-cycle cost of maintenance and of the service agreement, the duration of the proposed sole source contract, documentation that there is no other competing source for the procurement item (unless the procurement is under 1.b or c, below), a description of the procurement item, and any other information desired by the Procurement Officer will be maintained in the contract file.

1. Sole Source:

- a. Sole source procurements shall be conducted in accordance with the Act<sup>50</sup>. A sole source procurement may be conducted if:
- i. There is only one source for the procurement item;
  - ii. The award to a specific supplier, service provider, or contractor is a condition of a donation or grant that will fund the full cost of the supply, service or construction item; or
  - iii. The procurement item is needed for trial use or testing pursuant to the Act<sup>51</sup> to determine whether the procurement item will benefit the District.
- b. Except as provided in (i) below, sole source procurements over \$50,000 shall be published, and less costly sole source procurements may be published, in accordance with the Act<sup>52</sup>.
- i. The requirement for publication of notice for a sole source procurement is waived:
    - (1) For public utility services;
    - (2) If the award to a specific supplier, service provider, or contractor is a condition of a donation or grant that will fund the full cost of the supply, service, or construction item; or

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<sup>49</sup> Utah Code Ann. § 63G-6a-802(7).

<sup>50</sup> Utah Code Ann. § 63G-6a-802.

<sup>51</sup> Utah Code Ann. § 63G-6a-802.

<sup>52</sup> Utah Code Ann. § 63G-6a-406.

- (3) For other circumstances as determined in writing by the Procurement Officer.
- c. A person may contest a sole source procurement prior to the closing of the public notice period set forth in Section 63G-6a-406 of the Act by submitting the following information in writing to the Procurement Officer:
    - i. The name of the contesting person; and
    - ii. A detailed explanation of the challenge, including documentation showing there are other competing sources for the procurement item.
  - d. Upon receipt of information contesting a sole source procurement, the Procurement Officer shall conduct an investigation to determine the validity of the challenge and make a written determination either supporting or denying the challenge.
2. Continuation of Previous Purchases: When the purchase is a continuation of previous purchases, and there exists a clear potential for economic benefit to the District to negotiate a contract directly with the firm that supplied the initial purchase.
  3. No Response to Bid Invitation: When the District does not receive a response to its announcement, request or invitation to bid.
  4. Cooperative Contract: When the District makes purchases pursuant to a Participating Addendum. Furthermore, nothing contained in this Policy shall prohibit or limit the ability of the District to contract with any other public agency for the mutual exchange of supplies, material, services or equipment.
  5. Emergency Procurement: Emergency procurement shall be conducted as provided below and in accordance with the Act<sup>53</sup>. An emergency procurement may only be used when circumstances pose harm or risk of harm to public health, welfare, safety, or property, including but not limited to:
    - i. Damage to a facility or infrastructure resulting from flood, fire, earthquake, storm, or explosion;
    - ii. Failure or imminent failure of a public building, equipment, road, bridge or utility;
    - iii. Terrorist activity;
    - iv. Epidemic;
    - v. Civil unrest;
    - vi. Events that impair the ability of the District to function or perform required services;
    - vii. Other conditions as determined in writing by the Procurement Officer.
      - a. Emergency procurements are limited to those procurement items necessary to mitigate the emergency.

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<sup>53</sup> Utah Code Ann. § 63G-6a-803.

- b. While a standard procurement process is not required under an emergency procurement, when practicable the District may seek to obtain as much competition as possible through use of phone quotes, internet quotes, limited invitations to bid, or other selection methods.
- c. When it is practical to do so, the Procurement Officer should be notified of the emergency condition prior to the acquisition of any material or supplies, goods, wares or merchandise, as provided above. In the event an emergency arises after business hours, on a weekend or holiday and/or when it is otherwise not possible or convenient to notify the Procurement Officer, emergency purchases may be made by the department in charge as previously delegated beforehand in writing by the Procurement Officer, but such purchases shall be reported to the Procurement Officer on the first working day after the occurrence. Where circumstances permit, the Procurement Officer may propose lists of approved vendors for emergency purchases.
- d. A written determination documenting the basis for the emergency and the selection of the procurement item shall be made by the Procurement Officer and kept in the contract file. The required documentation may be prepared after the emergency condition has been alleviated.
- e. Within the first twenty-one (21) calendar days following a natural disaster, major industrial accident, or act of terrorism that materially damages or disrupts District facilities, equipment, properties, operations, communications, and/or transportation, the Procurement Officer is authorized to encumber up to the then-current balance of the Emergency Reserve Fund and to encumber up to Five Million Dollars (\$5,000,000) of other District funds, and to enter into contracts, without prior Board approval or authorization, for their repair, replacement, and/or reconstruction. An accounting of all monies spent and of all contracts made under this paragraph shall be reported to the members of the Executive Committee as soon as practicable following the natural disaster, industrial accident, or act of terrorism and to the Board for consideration and ratification at its next regularly scheduled meeting or at an emergency meeting, whichever first occurs.

6. Alternative Procurement Methods:

- a. The District may utilize alternative procurement methods to acquire procurement items, such as those listed below, when it is determined in writing by the Procurement Officer to be more practicable or advantageous to the District:
  - i. Used vehicles;
  - ii. Hotel conference facilities and services;
  - iii. Speaker honorariums; and
  - iv. Any other procurement item for which a standard procurement method is not reasonably practicable.

- b. When making this determination, the Procurement Officer may take into consideration whether:
  - i. The potential cost of preparing, soliciting and evaluating bids or proposals is expected to exceed the benefits reasonably associated with such solicitations;
  - ii. The procurement item cannot be acquired through a standard procurement process; or
  - iii. The price of the procurement item is fair and reasonable.
- c. In the event that it is so determined, the Procurement Officer may elect to utilize an alternative procurement method which may include:
  - i. Informal price quotations;
  - ii. Direct negotiations; and,
  - iii. Direct award.

## XI. PROCUREMENT OF CONSTRUCTION

- A. State Law: District construction projects are governed by the Act<sup>54</sup> and by this Policy.
  - 1. Alternative Approach: To the extent allowed by law, and notwithstanding anything to the contrary in this Policy, the District may procure construction pursuant to the requirements of Title 11, Chapter 39 of the Utah Code, in which event the “bid limit” calculated as provided in Utah Code Ann. § 11-39-101(1) shall replace all construction cost estimate and/or bid requirements based upon cost provisions of this Policy, including small purchase provisions under Part V, in which event otherwise applicable requirements of this Policy shall be superseded and replaced by the provisions of Title 11, Chapter 39.
- B. Construction Cost Estimate: The Manager or Procurement Officer shall cause plans and specifications for construction projects, including the estimated cost of the improvement, to be prepared by the District’s engineer (in house or consulting) or other qualified person.
- C. Extra Work and Change Orders: The Manager or Procurement Officer is authorized to approve extra work or change orders, each in an amount within the Manager’s funding approval authority, when justified by contract specifications and deemed to be in the best interest of the District. At the conclusion of the contract, a final written report will be presented to the Board.
  - 1. Certification - Increases in Contract Amount: Any change order which increases the contract amount shall be subject to prior written certification that the District has sufficient funds to pay the change order. The certification shall be made by the Treasurer.
- D. Construction Contract Management: The method of construction contracting management utilized for any given project shall be determined by the Manager or the Procurement Officer in consultation with the District’s engineer.

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<sup>54</sup> Utah Code Ann. § 63G-6a-1302.

1. Factors to Be Considered: It is intended that the Manager or Procurement Officer have sufficient flexibility in formulating the construction contract management method for a particular project to fulfill the needs of the District. Before selecting a construction contracting management method, the Manager or Procurement Officer, in consultation with the District's engineer, shall carefully consider the following factors: (a) when the project improvements must be ready for use; (b) the type of project; (c) the extent to which the requirements of the District, and the ways in which they are to be met, are known; (d) the location of the project; (e) the size, scope, complexity, and economics of the project; (f) the amount and source of funding and any resulting constraints or limitations necessitated by the funding source; (g) the availability, qualification and experience of District personnel to be assigned to the project and the amount of time the District personnel can devote to the project; (h) the availability, qualifications, and experience of outside consultants and contractors (including construction managers/general contractors) to complete the project under the various methods being considered; (i) the results achieved on similar projects in the past and the methods used; and (j) the comparative advantages and disadvantages of the construction contracting methods and how they might be adapted or combined to fulfill the needs of the District. The factors to be considered in achieving the purposes set forth herein are not to be construed as an exclusive list.

- a. The following descriptions are provided for the more common construction contracting management methods which may be used by the District. The methods described are not mutually exclusive, and may be combined on a project. These descriptions are not intended to be fixed in respect to all construction projects. These descriptions may be adapted to fit the circumstances of any given project.
  - i. Single Prime (General) Contractor. The single prime contractor method is typified by one business, acting as a general contractor, contracting with the District to timely complete an entire construction project in accordance with drawings and specifications provided by the District. Generally, the drawings and specifications are prepared by an architectural or engineering firm under contract with the District. Further, while the general contractor may take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with which the prime contractor has entered into subcontracts.
  - ii. Multiple Prime Contractors. Under the multiple prime contractor method, the District will contract directly with a number of general contractors or specialty contractors to complete portions of the project in accordance with the District's drawings and specifications. The District may have primary responsibility for the successful completion of the entire project, or the contracts may provide that one or more of the multiple prime contractors has this responsibility.
  - iii. Design-Build. In a design-build project, an entity, often a team of a general contractor and a designer, contract directly with the District to meet the District's requirements as described in a set of performance specifications and/or a program. Design responsibility and construction responsibility both rest with the design-build contractor. This method can include instances

where the design-build contractor supplies the site as part of the package.

- iv. Construction Manager Not at Risk. A construction manager is a person or firm experienced in construction who has the ability to evaluate and to implement drawings and specifications as they affect time, cost, and quality of construction and the ability to coordinate the construction of the project, including the administration of change orders as well as other responsibilities as described in the contract.
  - v. Construction Manager/General Contractor (Construction Manager at Risk). The District may contract with the construction manager early in a project to assist in the development of a cost effective design. In a Construction Manager/General Contractor (CM/GC) method, the CM/GC becomes the general contractor and is at risk for all of the responsibilities of a general contractor for the project, including meeting the specifications, complying with applicable laws, rules and regulations, completing the project on time and not exceeding a specified maximum price.
2. Written Statement: In making a decision concerning the method of construction contracting management to utilize for any given project, the Manager or Procurement Officer is to execute and include in the contract file a written statement setting forth the facts which led to the selection of the particular method of construction contracting management identified in XI.D.1(a)(i) thru (v).
3. Design Build Contracts: The District may procure architect-engineer services and construction using a single contract with the design-build provider.
- a. The District will consult a professional engineer or a licensed architect with design-build experience as provided in Utah Code Ann. § 11-39-107(2)(c).
4. Construction Manager/General Contractor (CM/GC): The District may enter into a contract for the management of a construction project which allows the contractor to subcontract for additional labor and materials that were not included in the contractor's cost proposal submitted at the time of the procurement of the construction manager/general contractor's services. The term "construction manager/general contractor" CM/GC shall not refer to a contractor whose only subcontract work not included in the original cost proposal is subcontracted portions of approved change orders. Should the District utilize the CM/GC method of construction contract management, the construction manager/general contractor will be selected using a "standard procurement process" as defined in the Act<sup>55</sup>, or an exception allowed under Part 8 of the Act may be utilized. When entering into any subcontract that was not specifically included in the CM/GC's cost proposal submitted to the District, the CM/GC shall procure that subcontractor by using a standard procurement process or an exception to the requirement to use a standard procurement process in the same manner as if the subcontract work were being procured by the District.
- a. As used herein, "management fee" includes only the following fees of the CM/GC:
    - i. Preconstruction phase services;

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<sup>55</sup> Utah Code Ann. § 63G-6a-103.



- ii. Monthly supervision fees for the construction phase; and
      - iii. Overhead and profit for the construction phase.
    - b. When selecting a CM/GC for a construction project, the evaluation committee:
      - i. May score a CM/GC based upon criteria contained in the solicitation, including qualifications, performance ratings, references, management plan, certifications, and other project specific criteria described in the solicitation;
      - ii. May, 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;
      - iii. May, at any time after the opening of the responses to the request for proposals, have access to and consider the management fees proposed by all offerors; and
      - iv. Except as provided in the Act<sup>56</sup>, may not know or have access to any other information relating to the cost of construction submitted by all offerors until after the evaluation committee submits its final recommended scores on all other criteria.
- E. Contract Clauses: The Act<sup>57</sup> encourages the District “to establish standard contract clauses to assist the [District] and to help contractors and potential contractors to understand applicable requirements.” To that end, clauses providing for adjustments in prices and time of performance and covering the following subjects generally will be included in construction contracts: (a) the unilateral right of the District to order in writing changes in the work within the scope of the contract and changes in the time of performance of the contract that do not alter the scope of the contract work; (b) variations occurring between estimated quantities of work in a contract and actual quantities; (c) suspension of work ordered by the District; and (d) site conditions differing from those indicated in the construction contract, or ordinarily encountered, except that differing site conditions clauses need not be included in a construction contract when the contract is negotiated, when the contractor provides the site or design, or when the parties have otherwise agreed with respect to the risk of differing site conditions.
- 1. Prohibited Contract Terms:
    - a. The District may not require that any contractor, subcontractor or material supplier engaged in the construction, maintenance, repair or improvement of public works pay its employees a predetermined amount of wages or wage rate or provide any particular type, amount or rate of employee benefits; provided, however, that any applicable federal or state minimum wage or benefit law may be enforced.
    - b. The District may not require a design professional to indemnify anyone from liability claims arising out of the design professional’s services, unless the liability claim arises from the design professional’s negligent act, wrongful act, error or omission, or other liability imposed by law or the person being indemnified is under the design professional’s direct or indirect control or responsibility.

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<sup>56</sup> Utah Code Ann. § 63G-6a-707.

<sup>57</sup> Utah Code Ann. § 63G-6a-1202.

- c. A provision in a construction contract requiring a dispute arising under the contract to be resolved in a forum outside of the state of Utah is void and unenforceable as against public policy as provided in Utah Code Ann. § 13-8-3.
  - d. No contract shall contain any provision or requirement which is prohibited by applicable law or public policy.
  - e. Should any prohibited provision or requirement be stated in any contract to which the District is a party, the contract shall be read and enforced as though the offending provision were not contained therein, to the extent allowed by law.
2. Remedy Clauses: Construction contracts may include clauses providing for appropriate remedies and covering the following subjects, among others: (a) liquidated damages; (b) specified excuses for delay or nonperformance; (c) termination of the contract for default; and (d) termination of the contract in whole or in part for the convenience of the District.

F. State Construction Registry:

- 1. Notice of Commencement: No later than 15 days after commencement of physical construction work at the project site, the District or its contractor shall file a notice of commencement with the State Construction Registry established by the Division of Occupational and Professional Licensing as required by Utah Code Ann. § 38-1b-201. The notice of commencement shall include the name, address, telephone number, and e-mail address of the person filing the notice of commencement; the name of the County in which the project property is located; information identifying the District's construction project; the date on which final completion occurred; and the method used to determine final completion, all as allowed by Utah Code Ann. § 38-1a-507.
- 2. Notice of Intent to Complete: The District or the District's contractor shall file a notice of intent to obtain final completion with the State Construction Registry in accordance with Utah Code Ann. § 38-1a-506 if:
  - a. Completion of performance time under the original contract is greater than 120 days;
  - b. The total original construction contract price exceeds \$500,000; and
  - c. A payment bond is not obtained in accordance with Utah Code Ann. § 14-2-1.
- 3. Notice of Intent to Obtain Final Completion: The notice of intent to obtain final completion shall include the name, address, telephone number, and e-mail address of the person filing the notice of intent; the name of the County in which the project property is located; information identifying the District's construction project; the date on which final completion occurred; and the method used to determine final completion, all as allowed by Utah Code Ann. § 38-1a-507.
- 4. Notice of Completion: Upon final completion of a construction project (regardless of whether a notice of intent to obtain final completion has been filed), a notice of completion may be filed with the State Construction Registry, including the name, address, telephone number, and e-mail address of the person filing the notice of completion; the name of the County in which the project property is located; information identifying the District's construction project; the date on which final

completion occurred; and the method used to determine final completion, all as allowed by Utah Code Ann. § 38-1a-507.

- G. Retainage: Retention proceeds withheld and retained from any payment due under the terms of a construction contract may not exceed 5% of the payment, and total retention proceeds withheld may not exceed 5% of the total construction price, as provided in Utah Code Ann. § 13-8-5. Furthermore, all retention proceeds shall be placed in an interest bearing account and be accounted for separately from other amounts paid under the contract. Interest accrued on the account shall be for the benefit of the contractor and all subcontractors of every tier and will be paid after the construction project is complete and has been accepted by the District, unless the District assumes partial occupancy of the project prior to completion, in which event proportionate accrued interest will be released within 45 days after partial occupancy.
1. Withholding Based on Breach: In the event of a breach of the construction contract documents, the District may withhold payment, for so long as reasonably necessary, an amount which is necessary to cure the breach or default or, if the project, or portion of a project as applicable, has substantially been completed, the District may retain until final completion up to twice the fair market value of any work that has not been completed.

## XII. INSPECTIONS

- A. Justification: Circumstances under which the District may perform inspections, as provided by contract, include inspections of the contractor's manufacturing/production facility or place of business, or any location where the work is performed, to determine: whether the definition of "responsible", as defined in the Act<sup>58</sup> and in the solicitation documents, has been met or is capable of being met; and if the contract is being performed in accordance with its terms.
- B. Access to Contractor's Manufacturing/Production Facilities: The District, as provided by contract, may enter a contractor's or subcontractor's manufacturing/production facility or place of business to: (a) inspect procurement items for acceptance by the District pursuant to the terms of a contract; (b) audit cost or pricing data or audit the books and records of any contractor or subcontractor; and (c) investigate in connection with an action to debar or suspend a vendor from consideration for award of a contract.
- C. Inspection of Supplies and Services:
1. Contract to Control: Contracts may provide that the District may inspect procurement items at the contractor's or subcontractor's facility and perform tests to determine whether any procurement item conforms to solicitation and contract requirements.
- D. Conduct of Inspections: Inspections or tests shall be performed so as not to unduly delay the work of the contractor or subcontractor. No inspector may change any provision of the specifications or the contract without written authorization by the Procurement Officer, Manager, or a District staff engineer acting as the project manager. The presence or absence of an inspector or an inspection shall not relieve the contractor or subcontractor from any requirement of the contract. When an inspection is made, the contractor or subcontractor will be expected to provide, without charge, all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.

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<sup>58</sup> Utah Code Ann. § 63G-6a-103.

### XIII. PRICE AND COST

- A. Price Adjustments: A contract may allow price adjustments, but cost or pricing data shall be required in support of a proposal leading to the adjustment of any contract pricing. All accounting for contracts and contract price adjustments, including allowable incurred costs, shall be conducted in accordance with generally accepted accounting principles for government.
1. Exceptions: Cost or pricing data exceptions:
    - a. Cost or pricing data need not be submitted when the terms of the contract specify established market indices, or catalog prices or other benchmarks are used as the basis for contract price adjustments, or when prices are set by law or rule;
    - b. If a contractor submits a price adjustment that is higher than established market indices, catalog prices or other benchmarks established in the contract, the Procurement Officer may request additional cost or pricing data; or
    - c. The Procurement Officer may waive the requirement for cost or pricing data, provided a written determination is made supporting the reasons for the waiver. A copy of the determination shall be kept in the contract file.
  2. Computation: Adjustments in price pursuant to clauses promulgated under Subsection XI.F. shall be computed in one or more of the following ways: (a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable; (b) by unit prices specified in the contract or subsequently agreed upon; (c) by the costs attributable to the events or situations under the clauses with adjustment of profit or fee, all as specified in the contract or as subsequently agreed upon; (d) in any other manner as the contracting parties may mutually agree; or (e) in the absence of agreement by the parties, by a unilateral determination by the District of the costs attributable to the events or situations under the clauses with adjustment of profit or fee, all as computed by the District in accordance with applicable provisions of Part XI, which are issued as allowed by the Act<sup>59</sup>, and subject to other applicable provisions of the Act.
  3. Defective Costs or Pricing Data: If defective cost or pricing data was used to adjust a contract price, the vendor and the District may enter into discussions to negotiate a settlement. If a settlement cannot be negotiated, either party may seek judicial relief.
  4. Price Analysis:
    - a. Price analysis may be used to determine if a price is reasonable and competitive, such as when:
      - i. There are a limited number of bidders or offerors;
      - ii. Awarding a sole source contract; or
      - iii. Identifying price outliers in bids and offers.

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<sup>59</sup> Utah Code Ann. § 63G-6a-1206.

- b. Price analysis involves a comparison of prices for the same or similar procurement items, including quality, warranties, service agreements, delivery, contractual provisions, terms and conditions, etc.
  - c. Examples of a price analysis include:
    - i. Prices submitted by other prospective bidders or offerors;
    - ii. Price quotations;
    - iii. Previous contract prices;
    - iv. Comparisons to the existing contracts of other public entities; and,
    - v. Prices published in catalogs or price lists.
  
- 5. Cost Analysis: Cost analysis includes the verification of cost data. Cost analysis may be used to evaluate:
  - a. Specific elements of costs;
  - b. Total cost of ownership and life-cycle cost;
  - c. Supplemental cost schedules;
  - d. Market-based cost of similar items;
  - e. The necessity for certain costs;
  - f. The reasonableness of allowances for contingencies;
  - g. The basis used for allocation of indirect costs; and,
  - h. The reasonableness of the total cost or price.
  
- 6. Audit: The District may, at reasonable times and places and as provided by contract, audit or cause to be audited by an independent third party firm, by another procurement unit, or by an agent of the District, the books, records, and performance of a contractor, prospective contractor, subcontractor, or prospective subcontractor.
  
- 7. Retention of Books and Records: The District shall require contractors to maintain all records related to the contract for at least six years after final payment, unless a longer period is required by law.
  
- 8. Applicable Credits: Applicable credits are receipts or price reductions which offset or reduce expenditures allocable to contracts as direct or indirect costs. Examples include, but are not limited to, purchase discounts, rebates, allowance, recoveries or indemnification for losses, sale of scrap and surplus equipment and materials, adjustments for overpayments or erroneous charges, and income from employee recreational or incidental services and food sales.
  
- 9. Use of Federal Cost Principles:
  - a. In dealing with contractors operating according to federal cost principles, the Procurement Officer may use federal cost principles, including, but

not limited to, the determination of allowable, allocable, and reasonable costs as guidance.

- b. In contracts not awarded under a program which is funded by federal assistance funds, the Procurement Officer may explicitly incorporate federal cost principles into a solicitation, and thus into any contract awarded pursuant to that solicitation. The Procurement Officer and the contractor, by mutual agreement, may incorporate federal cost principles into a contract during negotiation or after award.
- c. In contracts awarded under a program which is financed in whole or in part by federal assistance funds, all requirements set forth in the assistance document, including specified federal cost principles, must be satisfied. To the extent that the cost principles specified in the grant document conflict with the cost principles issued pursuant to the Act<sup>60</sup>, the cost principles specified in the grant shall control.

- 10. Authority to Deviate from Cost Principles: Before the District may deviate from the cost principles set forth in this Policy, a written determination must be made by the Procurement Officer specifying the reasons for the deviation. The written determination shall be made part of the contract file.

#### XIV. MULTIPLE AWARD CONTRACTS – INDEFINITE QUANTITY CONTRACTS

- A. Multiple Award: As authorized by the Act<sup>61</sup>, the District may enter into multiple award contracts. A multiple award contract is a procurement process where two or more bidders or offerors are awarded a contract under a single solicitation. Purchases are made through an order placed with one of the contractors pursuant to the procedures established in the solicitation and the contract. Contractors receiving a contract award are not guaranteed that procurement items will be purchased from their contracts.

- 1. Use: A multiple award contract may be awarded under a single solicitation to two or more bidders or offerors when similar procurement items are needed for:
  - a. Coverage on a regional basis or based on other criteria specified by the District in the solicitation such as:
    - i. Delivery;
    - ii. Service;
    - iii. Product availability; or
    - iv. Compatibility with existing equipment or infrastructure.
- 2. Solicitation: In addition to the requirements set forth in the Act<sup>62</sup>, when it is anticipated that a procurement will result in multiple contract awards, the solicitation shall include a statement that:
  - a. Indicates that contracts may be awarded to more than one bidder or offeror;
  - b. Specifies whether contracts will be awarded on a regional basis or based on a specified requirement of the District; and

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<sup>60</sup> Utah Code Ann. § 63G-6a-1206.

<sup>61</sup> Utah Code Ann. § 63G-6a-1204.5.

<sup>62</sup> Utah Code Ann. §§ 63G-6a-603 and -703.

- c. Describes specific methodology or a formula that will be used to determine the number of contract awards.
3. Invitation for Bids: Multiple award contracts in an invitation for bids shall be issued in accordance with Part 6 of the Act to the lowest responsive and responsible bidders meeting the objective criteria described in the invitation for bids and may be awarded to provide adequate regional coverage, meet a specified requirement of the District, or satisfy delivery or product availability needs of the District using the following methods:
- a. Lowest bid for all solicited procurement items, provided:
    - i. The solicitation indicates that multiple contracts will be awarded to the lowest bidders for all procurement items being solicited as determined by a break in prices specifically stated in the solicitation, such as any price within a specific percentage of the lowest responsive and responsible bid price, or other methodology described in the solicitation;
  - b. Lowest bid by Category, provided:
    - i. The solicitation indicates that contracts will be awarded based on the lowest bid in a category; and
    - ii. Only one bidder may be awarded a contract per category if so specified in the solicitation;
  - c. Lowest bid by line item, provided:
    - i. The solicitation indicates that contracts will be awarded based on the lowest bid per line item; and
    - ii. Only one bidder may be awarded a contract per line item if so specified in the solicitation;
  - d. Any combination of (a), (b) and/or (c) above, or
  - e. Any other methodology described in the solicitation.
  - f. All responsive and responsible bidders may be awarded a contract, provided the contracts specifically direct that orders must be placed first with the low bidder unless the lowest cost bidder cannot provide the needed procurement item, then with the second lowest bidder unless the second lowest cost bidder cannot provide the needed procurement item, then with the third lowest bidder unless the third lowest cost bidder cannot provide the needed procurement item, and so on in order from the lowest cost responsive and responsible bidder to the highest cost responsive and responsible bidder until the order is filled or the list of responsive and responsible bidders has been exhausted.
4. Request for Proposals: The award of multiple contracts in a request for proposals shall be made in accordance with Part 7 of the Act and may be awarded on a regional basis or based on other criteria set forth in the solicitation and in accordance with point thresholds and other methodology set forth in the RFP describing how multiple award contracts will be awarded with enough specificity to avoid the appearance of favoritism affecting the decision of whether to award multiple contracts and who should receive a multiple award contract.

5. Multiple Award Contracts for Unidentified Procurement Items:

- a. An unidentified procurement item is defined as a procurement item that, at the time the solicitation is issued:
  - i. Has not been specifically identified but will be identified at some time in the future, such as an approved vendor list or approved consultant list.
  - ii. Does not have a clearly defined project or procurement-specific scope of work; and
  - iii. Does not have a clearly defined project or procurement-specific budget.
- b. Unidentified procurement items may be procured under approved vendor list thresholds established by the Board.
- c. An RFP or other solicitation issued for a multiple award contract for unidentified procurement items must specify the methodology that will be used to determine which vendor(s) under the multiple award contract will be selected to receive an order.
  - i. The methodology must include a procedure to document that the District is obtaining best value, including an analysis of cost and other evaluation criteria outlined in the solicitation.
  - ii. The methodology must also ensure the fair and equitable treatment of each multiple award contract vendor, including using methods to select a vendor(s) such as:
    - (1) Using a rotation system, organized alphabetically, numerically, or randomly;
    - (2) Assigning a potential contractor to a specified geographical area;
    - (3) Classifying each potential contractor based on the potential contractor's field or area of expertise; or
    - (4) Obtaining quotes or bids from two or more contractors.

6. Ordering from Multiple Award Contracts:

- a. When buying procurement items under a multiple award contract that was awarded through an invitation for bids, the District shall obtain a minimum of two quotes for the procurement item(s) being purchased and place the order with the contractor with the lowest quoted price.
  - i. The requirement to obtain two or more quotes is waived when there is only one bidder for the particular procurement item or geographical area.
  - ii. The order need not be placed with the lowest bidder if that bidder cannot provide the needed procurement item(s), in which event the order may be placed with the second lowest bidder unless the second lowest bidder cannot provide the needed



procurement item(s), and so on, in order, until a responsive bidder is selected or the list of bidders is exhausted.

- iii. If the methodology described in the solicitation is based on criteria other than the lowest price, the designated methodology shall control.
- b. When buying procurement item(s) under a multiple award contract that was awarded through an RFP, the District may place orders based on the District's determination as to which contractor(s) or procurement item(s) best meets the needs of the District. Contracts awarded through the RFP process are awarded based on the best value to the District, taking into consideration price and the other specific non-price criteria set forth in the RFP. Consequently, all contractors and procurement items under contract issued through an RFP have been determined to provide best value to the District.
- c. A multiple award contract may not be used to steer purchases to a favored contractor or use any other means or methods that do not result in fair consideration being given to all contractors.

7. Primary and Secondary Contracts:

- a. Designations of multiple award contracts as primary and secondary may be made if a statement to that effect is contained in the solicitation documents.
- b. When the Procurement Officer determines that the need for a procurement item will exceed the capacity of any single primary contractor, secondary contracts may be awarded to additional contractors.
- c. Purchases under primary and secondary contracts will be made initially from the primary contractor offering the lowest contract price until the primary contractor's capacity has been reached or the items are not available from the primary contractor, then from secondary contractors in progressive order from lowest price or best availability to the next lowest price or best availability, and so on.

8. Intent to Use: If a multiple award is anticipated prior to issuing a solicitation, the method of award shall be stated in the solicitation.

B. Contracts and Change Orders -- Contract Types: The District may use contract types to the extent authorized by the Act<sup>63</sup>.

C. Prepayments: Prepayments are subject to the restrictions contained in the Act<sup>64</sup>.

D. Leases of Personal Property:

- 1. Requirements: Leases, including a lease with a purchase option, of personal property are subject to the following:
  - a. A lease may be entered into provided that the District complies with the Act<sup>65</sup> and:

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<sup>63</sup> Utah Code Ann. § 63G-6a-1205.

<sup>64</sup> Utah Code Ann. § 63G-6a-1208.

- i. The lease is in the best interest of the District;
  - ii. All conditions for renewal and costs of termination are set forth in the lease; and
  - iii. The lease is not used to avoid a competitive procurement.
2. Completion Requirement: Contracts for lease will be conducted with as much competition as practicable under the circumstances.

XV. PROCUREMENT OF PROFESSIONAL SERVICES

A. Architect, Engineer or Surveyor: The District may not legally be obligated to consider more than one architect, engineer or surveyor when procuring those professional services (referenced to “architect-engineer-surveyor”). However, should more than one such professional be considered for engagement, the Board shall consider in the selection process those elements, at a minimum, required by Utah Code Ann. § 17B-1-108: (a) the qualifications, experience and background of each firm (or individual if the professional is not part of a firm) submitting a proposal; (b) the specific individual(s) assigned or to be assigned to the project and the time commitments of each to the project; (c) the project schedule and approach to the project that each firm (or individual) will take; and (d) cost. The District may engage the services of a professional architect-engineer-surveyor based on the above criteria rather than based solely on the lowest cost. Subject to the above, the provisions of Part 15 of the Act apply to the procurement of services within the scope of the practice of architecture as defined in Section 58-3a-102 or professional engineering as defined in Section 58-22-102 of the Utah Code or surveying as defined in Section 58-22-102 of the Utah Code.

1. Professional Services Evaluation Committee: The Procurement Officer shall designate members of the Professional Services Evaluation Committee. The evaluation committee must consist of at least three members who are qualified under Section 63G-6a-707 of the Act, at least one of whom is well qualified in the profession of architecture or engineering or surveying.

2. Request for Statements of Qualifications:

- a. The District will issue a public notice for a request for statements of qualifications to be used in ranking architect-engineer-surveyor.
- b. A request for statement of qualifications will state:
  - i. The type of procurement item to which the request for statements of qualifications relates;
  - ii. The scope of the work to be performed;
  - iii. The instructions and the deadline for providing information in response to the request for statements of qualifications; and
  - iv. Criteria to be used to evaluate statements of qualifications including:
    - (1) Basic information about the person or firm;
    - (2) Experience and work history;

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<sup>65</sup> Utah Code Ann. § 63G-6a-1209.

- (3) Management and staff;
  - (4) Qualifications;
  - (5) Licenses and certifications;
  - (6) Applicable performance ratings;
  - (7) Financial statements; and
  - (8) Other pertinent information.
- c. Key personnel identified in a statement of qualifications may not be changed without the advance written approval of the District.
  - d. Architect-engineer-surveyor shall not include cost information in a response to a request for statements of qualifications, except as otherwise required by law or this Policy.
- 3. Evaluation of Statements of Qualifications: The evaluation committee shall evaluate statements of qualifications in accordance with the Act<sup>66</sup> to rank (score) architect-engineer-surveyor.
  - 4. Negotiation and Award of Contract: The Procurement Officer or designee shall negotiate a contract with the most qualified firm for the required services at compensation determined to be fair and reasonable.
  - 5. Failure to Negotiate Contract with the Highest Ranked Firm:
    - a. If fair and reasonable compensation, contract requirements, and contract documents cannot be agreed upon with the highest ranked firm, the Procurement Officer shall advise the firm in writing of the termination of negotiations.
    - b. Upon failure to negotiate a contract with the highest ranked firm, the Procurement Officer shall proceed in accordance with the Act<sup>67</sup>.
  - 6. Notice of Award:
    - a. The District may award a contract to the highest ranked firm with which the fee negotiation was successful.
    - b. Notice of the award shall be made available to the public pursuant to the Act and to GRAMA.
- B. Contract Extensions: Subject to Section IV.A. of this Policy, contracts with consultants providing architectural-engineering-surveyor services may be extended from year-to-year at the discretion of the Board.
  - C. Other Professional Services: The District may procure other professional services, including, but not limited to, accounting, legal, financial advising, or water rate advising, by using the “architecture-engineering-surveyor” procedures in XV.A and B.

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<sup>66</sup> Utah Code Ann. § 63G-6a-707.

<sup>67</sup> Utah Code Ann. § 63G-6a-1505.

The following criteria, among others, may be considered for selection of other professional services, other than those identified above in XV.A:

1. Appropriate level of training, experience, expertise and availability of project personnel.
  2. Ability to perform the work, with respect to personnel availability, adequacy, present workload, available equipment and facilities.
  3. Resources and expertise available to the project.
  4. Past performance in assisting the District.
  5. Local office, local firm presence and availability of project personnel for meetings and communications with District personnel.
  6. Estimated costs of the professional firm.
- D. Evaluation Criteria Table: The Procurement Officer shall approve in writing, prior to the District issuing an RFP, the evaluation criteria to be used for the weighting and ranking method. A table, which lists sample criteria weighting and ranking, is set forth in Exhibit 2 to this Policy; the table is illustrative and not definitive.

## XVI. BONDS

Performance and other bonds in such amounts as shall be reasonably necessary to protect the interests of the District may be required. The nature, form and amount of such bonds are to be described in the notice inviting bids or in the request for competitive sealed proposals, regardless of the procurement type (construction, equipment, etc.).

### A. Bid Security Requirements:

1. Construction: Invitations for Bids and Requests for Proposals for construction contracts estimated to cost more than \$50,000 generally will require the submission of a bid bond in an amount equal to at least 5% of the bid, at the time the bid is submitted, and the Procurement Officer may require a bid bond for a construction contract that is estimated to cost \$50,000 or less.
2. Other Procurements: Invitations for Bids and RFP for other procurements may require the submission of bid security, including specifications for the form and type of bid security, when the Procurement Officer determines it to be in the best interest of the District.
3. Acceptable Bid Security Not Furnished: If bid security is required and acceptable bid security is not furnished, the bid shall be rejected as nonresponsive, unless the failure to comply is determined by the Procurement Officer to be nonsubstantial. Failure to submit an acceptable bid security may be deemed nonsubstantial if:
  - a. The bid security is submitted on a form other than the required bid bond form and the bid security meets all other requirements of this Policy and the contractor provides acceptable bid security by the close of business of the next succeeding business day after being notified of the defective bid security;
  - b. Only one bid is received, and there is not sufficient time to re-solicit;



- c. Bonds are not necessary to protect the interests of the District.
2. Failure to Obtain: If the District fails to obtain a payment bond for a construction project, there may be liability to anyone furnishing labor or supplying materials for the construction project as provided in Utah Code Ann. § 14-11-19.

## XVII. PROHIBITED ACTS/ETHICS

- A. Supremacy of Law: Nothing contained in this Policy shall be construed to authorize conduct that would constitute a crime under any applicable law or ordinance. The requirements of Part XVII shall apply in addition to other legal requirements including, but not limited to, Utah Code Ann. §§ 67-16-1 *et. seq.* (the Utah Public Officers and Employees Ethics Act) and applicable sections of Chapter 8 of Title 76 of the Utah Code (dealing with offenses against the administration of government such as bribery). It is the general policy of the District that employees and members of the Board not receive compensation for assisting any person or entity in a transaction involving the District. For any departure from that general policy to be countenanced, the employee or Board Member must sign and file the sworn, written statement required by Utah Code Ann. § 67-16-6.
- B. Conflict of Interest:
  1. No member of the Board or employee of the District may have a direct or indirect interest in any contract entered into by the District unless such interest is disclosed to the Board by the Manager before the contract is approved. A Board member or employee will be presumed to have an indirect interest in any contract in which a relative of the Board member or employee, as “relative” is defined in Utah Code Ann. § 52-3-1(1)(d) (a father, mother, husband, wife, son, daughter, sister, brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law), holds a direct interest in the contract. Any Board member who is interested in a proposed contract with the District shall disclose that interest to the other Board members, shall not participate in any Board discussion of the contract, and shall abstain from voting on the contract. An interested Board member may, however, be counted toward the required quorum for any Board meeting attended by the interested Board member.
  2. Any employee who has an interest in a proposed contract with the District shall so notify the Manager in writing. Such employee may not participate in any evaluation of the proposed contract or of any competing bids or proposals. Before the Board may approve any contract in which a Board member or employee has a known interest, the Board must make a finding to the effect that the proposed contract is in the best interest of the District and is significantly better than any available alternative.
  3. A violation of the requirements of this Subsection, including the required advance notification of any conflict of interest, may be cause for rescission of the contract award and/or subject the violator to discipline, including termination of an employee of the District. Approval of a contract in which a relative of a District Board member or employee holds a direct interest shall not be invalid, and the Board member or employee shall not be subject to sanctions, if the Board member or employee was not aware of the interest of the relative prior to the approval of the contract. The burden shall be on the Board member or employee to establish this lack of knowledge, should an issue be raised concerning the contract in which the relative holds a direct interest.

- C. Improper Influence: No employee or official of the District shall use the employee's or official's position with the District to pressure, coerce, or otherwise improperly induce any vendor or other person to provide a special benefit to the employee or official that would not generally be available to others. By way of illustration, no employee or Board member may threaten or imply that a vendor's failure to provide a favorable price or other concession on a personal purchase will or may jeopardize the vendor's relationship with the District.
- D. Collusion: Any agreement or collusion among vendors or prospective vendors in restraint of competition and/or fairness shall render the bids/proposals of each such vendor void, if detected before the contract is awarded, or constitute grounds for the District to void or rescind any contract to a participant in the collusion if finally determined after the contract has been awarded, and may also result in the debarment of participating potential vendors.
- E. Sales Taxes: As a governmental entity, the District is not required to pay sales tax on certain of its purchases. No employee or official shall use the District's immunity from sales tax collection to avoid the payment of sales tax on personal purchases, except as otherwise provided in Subsection H.1, below.
- F. Gifts and Gratuities: No employee or official shall accept any gift or gratuity from any vendor who deals, or desires to deal, with the District that would violate any provision of law or District policy. This restriction is not intended to prohibit small promotional gifts, such as calendars, pens, candy, note pads, etc., of a relatively nominal value that are commonly utilized for public relations or advertising purposes and which do not otherwise violate law<sup>68</sup> or District policy. Similarly, this restriction is not intended to prohibit business lunches and dinners provided they comply with the District's rules, regulations, and policies and do not violate applicable law.
- G. Personal Purchases: No District employee or official shall purchase goods or services for personal use and ownership using any District account or District funds.
1. No Personal Use or Ownership - Exceptions: Notwithstanding the foregoing prohibition, with the approval of the Manager, goods and services may be purchased in the name of the District through a District account and/or utilizing District funds even though those goods and services will become the personal property of employees or officials of the District, provided that any such good or service is to be utilized by the employee or official in performing, or in recognition of, an employee's duties for the District.
  2. Personal Purchases - Validity: Nothing contained in this Policy shall prohibit or prevent either employees or officials from purchasing from vendors who also provide goods or services to the District provided that such private purchases are clearly denoted as such and are made in the name of the employee or official. Furthermore, nothing contained in this Policy shall prohibit employees or officials from receiving discount or membership cards from District vendors provided that such cards and memberships are in the name of the individual employee or official, all purchases are billed to and paid for directly by the employee or official, and such cards and memberships are made available to members of the public as a whole, or to a subgroup of the public, and are not based upon the employee's or official's position with the District.
- H. Favored Vendor: District employees and officers are prohibited from taking any act, or refusal or failure to act, with the intention of creating a favored vendor situation (as

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<sup>68</sup> Utah Code Ann. § 67-16-5.

defined in Part II of this Policy). Any violation of this restriction shall be subject to discipline, including termination.

- I. Procurement Professional: Should any employee of the District be classified as a "Procurement Professional" as defined in the Act<sup>69</sup>, the Procurement Professional shall be governed by Part 24 of the Act, in addition to other applicable law.
  1. Socialization with Vendors and Contractors: A Procurement Professional shall not:
    - a. Participate in social activities with vendors or contractors that may interfere with the proper performance of the Procurement Professional's duties;
    - b. Participate in social activities with vendors or contractors that may lead to unreasonably frequent disqualification of the Procurement Professional from the procurement process; or
    - c. Participate in social activities with vendors or contractors that would appear to a reasonable person to undermine the Procurement Professional's independence, integrity, or impartiality.
  2. Duty to Notify Supervisor: If a Procurement Professional participates in a prohibited social activity, or has a close personal relationship with a vendor or contractor, the Procurement Professional shall promptly notify the appropriate supervisor and the supervisor shall take appropriate action, which may include removal of the Procurement Professional from the affected procurement or contract administration process.

## XVIII. CONTROVERSIES AND PROTESTS

### A. Act Provisions:

1. Part 16: Controversies and protests shall be processed in accordance with the requirements set forth in the Act<sup>70</sup>. This Part XVIII provides additional requirements and procedures, and will be used in conjunction with the Act. Unless otherwise designated by the Board, the Procurement Officer shall be the "Protest Officer".
2. Part 19: The Act<sup>71</sup>, contains provisions regarding:
  - a. Limitations on challenges of:
    - i. A procurement;
    - ii. A procurement process;
    - iii. The award of a contract relating to a procurement;
    - iv. A debarment; or
    - v. A suspension; and

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<sup>69</sup> Utah Code Ann. § 63G-6a-2402.

<sup>70</sup> Utah Code Ann. §§ 63G-6a-1601 thru -1604.

<sup>71</sup> Utah Code Ann. §§ 63G-6a-1901 thru -1911, and Part 19.



- b. The effect of a timely protest or appeal;
  - c. The costs to or against a protester;
  - d. The effect of prior determinations by employees, agents, or other persons appointed by the District;
  - e. The effect of a violation found after award of a contract;
  - f. The effect of a violation found prior to the award of a contract;
  - g. Interest rates; and
  - h. A listing of determinations that are final and conclusive unless they are arbitrary and capricious or clearly erroneous.
- B. General: Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Protest Officer.
1. Deadline: A protest with respect to the invitation for bids or a request for proposals is to be submitted in writing prior to the opening of bids or the closing date for proposals, unless the aggrieved person did not know and should not have known of the facts giving rise to the protest prior to the bid opening or the closing date for proposals. In any event, the protest shall be submitted in writing within 7 days after the aggrieved person knows or should have known of the facts giving rise thereto. Anyone failing to file a protest within the time prescribed may not:
    - a. Protest to the Protest Officer a solicitation or award of a contract; or
    - b. File an action or appeal challenging a solicitation or award of a contract before an appeals panel, a court, or any other forum.
  2. Protest Document. A person filing a protest shall include in the filing document:
    - a. The person's address of record and e-mail address of record; and
    - b. A concise statement of the grounds upon which the protest is made.
  3. Resolution/Correction of Errors: The Protest Officer or designee shall have the authority to settle and resolve a protest. Furthermore, if at any time during the protest process it is discovered that a procurement is out of compliance with any part of the Act or this Policy, including errors or discrepancies, the Protest Officer may take administrative action to correct or amend the procurement to bring it into compliance, correct errors or discrepancies, or cancel the procurement.
- C. Verification of Legal Authority: A person filing a protest in a representative capacity may be asked to verify that the person has legal authority to file the protest on behalf of the affected party.
- D. Intervention in a Protest: After a timely protest is filed in accordance with the Act, the Protest Officer shall notify awardees of the subject procurement, and may notify others, of the protest.
1. Period of Time to File: A motion to intervene must be filed with the Protest Officer no later than ten days from the date such notice is sent by the Protest Officer. Only those motions to intervene made within the time prescribed in this Part XVIII

will be considered timely. The District and the intended beneficiaries of the procurement (the intended awardee of the procurement) are automatically considered to be parties of record and need not file a motion to intervene.

2. Contents of a Motion to Intervene: A copy of any motion to intervene will be mailed or e-mailed to the party protesting the procurement.
    - a. Any motion to intervene must state, to the extent known, the position taken by the intervenor and the basis in fact and law for that position. A motion to intervene must also state the intervenor's interest in sufficient factual detail to demonstrate that:
      - i. The intervenor has a right to participate which is expressly conferred by statute or by applicable rule, order, or other action; or
      - ii. The intervenor has or represents an interest which may be directly affected by the outcome of the proceeding, including an interest as a consumer; customer; competitor; security holder of a party; or the person's participation is in the public interest.
  3. Granting of Status: If no written objection to a timely motion to intervene is filed with the Protest Officer within seven calendar days after the motion to intervene is received by the protesting person, the intervenor becomes a party at the end of this seven day period. If an objection is timely filed, the intervenor becomes a party only when the motion is expressly granted by the Protest Officer based on a determination that a basis for intervention exists as stated in this Part XVIII.
  4. Late Motion: If a Motion to Intervene is not timely filed, the Motion shall be denied by the Protest Officer.
- E. Delay in Award of Contract: In the event of a timely protest under Subsection A., above, the District will not proceed further with the solicitation or with the award of the contract until all administrative and judicial remedies have been exhausted or until the Procurement Officer, in consultation with appropriate District personnel, makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the District.
- F. Proceedings to Debar/Suspend Potential Contractors:
1. Debarment: After reasonable notice to the person/entity involved and a reasonable opportunity for that person/entity to be heard, the Procurement Officer shall have authority to debar a person/entity for cause from consideration of award of a contract for a period not exceeding three years.
  2. Suspension: The Procurement Officer shall have authority to suspend a person/entity from consideration for the award of a contract if there is probable cause to believe that the person/entity has engaged in any activity which might lead to debarment. The suspension shall not be for a period exceeding three months unless a charge or an indictment has been issued for an offense which would be a cause for debarment as set forth in the Act<sup>72</sup>, in which event the suspension shall remain in effect until after the trial of the suspended person.
- G. Resolution of Controversies: The Procurement Officer is authorized to settle and resolve a controversy which arises between the District and a contractor under or by virtue of a

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<sup>72</sup> Utah Code Ann. § 63G-6a-904.

contract. This includes, without limitation, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

- H. Written Decision: The Procurement Officer shall promptly issue a written decision regarding any protest, debarment or suspension or contract controversy if it is not settled by mutual agreement. The decision shall state the reasons for the action taken and inform the protestor, contractor, or prospective contractor of the right to administrative or judicial review as provided in Parts 17 and 18 of the Act.
- I. Timing and Finality of Decision:
1. Adverse Decision Presumed After 30 Days: As provided in the Act<sup>73</sup>, if a final written decision regarding a protest is not issued within 30 calendar days after the day on which a written request for a final decision is filed with the Protest Officer, or within such longer period as may be agreed upon by the parties, the protestor, prospective vendor, or vendor may proceed as if an adverse decision had been received.
  2. Finality: Except as otherwise specifically provided in this Part XVIII, a decision of the Procurement Officer shall be effective until stayed or reversed on appeal.
  3. Written Decision: Once available, a copy of the decision shall be immediately mailed or otherwise furnished to the protestor, prospective contractor, or contractor and any parties that have been allowed to intervene in the proceeding. The decision shall be final and conclusive unless the protestor, prospective contractor, or contractor (a "vendor") timely files an appeal to an appeals panel established by the Procurement Policy Board in accordance with the Act<sup>74</sup> within the applicable 7 day statute of limitations period specified in the Act<sup>75</sup>.
- J. Violation of Law: If, before an award of a contract, it is finally determined administratively or upon administrative or judicial review that a solicitation or proposed award of a contract is in violation of law, the solicitation or proposed award shall be canceled or revised to comply with applicable law, unless different relief is mandated.
- K. Options After Adverse Determination: If, after an award of a contract, it is finally determined administratively or upon administrative or judicial review that a solicitation or award of a contract is in violation of law, provided that the recipient of the award has not acted fraudulently or in bad faith, unless different relief is ordered: (a) the contract may be ratified and affirmed by the District if it is determined by the Board that doing so is in the best interest of the District; or (b) the contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract prior to termination, plus a reasonable profit.
- L. Fraudulent Conduct by Contractor: If, after an award of a contract, it is determined administratively or upon administrative or judicial review that a solicitation or award of a contract is in violation of law and if the recipient of the award has acted fraudulent or in bad faith, unless different relief is ordered: (a) the contract will be declared null and void; or (b) the contract may be ratified and affirmed if such action is in the best interest of the District, as determined by the Board, without prejudice to the District's rights to any appropriate damages.
- M. Appeal to the Board: Nothing provided in this Part XVIII shall limit the ability and authority of the Board to provide for a two-step appeal process at the District level provided that

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<sup>73</sup> Utah Code Ann. § 63G-6a-1603(9).

<sup>74</sup> Utah Code Ann. §§ 63G-6a-1701 thru -1706.

<sup>75</sup> Utah Code Ann. § 63G-6a-1702.

the entire proceeding is completed within the time limits stated in this Part XVIII and in Part 16 of the Act. Furthermore, the Board may designate itself as the Protest Officer at any time in the Board's sole discretion.

4838-2051-1006, v. 4

EXHIBIT 1

DELEGATIONS MADE BY MANAGER/PROCUREMENT OFFICER

Delegated to District Position	Maximum Limit of Purchase Approval Authority
Deputy General Manager / Assistant General Managers / <u>Chief Engineer</u>	Up to \$30,000
General Counsel, for authorization from the Emergency Reserve Fund during after-hours emergencies	Up to \$30,000
Treasurer/Chief Financial Officer	Up to \$10,000
Department Managers / <u>Engineering Group Leader</u>	Up to \$10,000
Human Resources Manager	Up to \$5,000
Division Managers	Up to \$2,500
<u>Conservation Division Manager, for payment of landscape incentives in accordance with program terms and conditions</u>	<u>Up to \$20,000</u>
Executive Assistant	Up to \$750
Administrative Assistant III	Up to \$750

EXHIBIT 2

ILLUSTRATIVE TABLE FOR CRITERIA WEIGHTING AND RANKING

	Criteria Weighting (Scoring Points Possible)	
	Low Complexity	High Complexity
1. Appropriate level of training, experience, expertise and availability of key project personnel, and firm resources available for the proposed project.	25	35
2. Quality of work plan and responsiveness to technical and schedule requirements.	20	25
3. Past performance on similar projects for other owners, and for the District in particular.	20	25
4. Fee Proposal (note: the District will open the fee proposal only if the proposer receives acceptable scores on the first three selection criteria).	35	15
Maximum Points:	100	100