**R33. Government Operations, Purchasing and General Services.**

**R33-109. Cancellations, Rejections, and Debarment.**

**R33-109-101. Cancellation Before Opening.**

A solicitation under a standard procurement process may be canceled before the deadline for receipt of a solicitation response when it is in the best interests of the procurement unit as determined by the procurement official. In the event a solicitation is canceled, the reasons for cancellation shall be made part of the procurement file and shall be available for public inspection and the procurement unit shall:

(1) re-solicit new responses to a solicitation using a standard procurement process using the same or revised specifications; or

(2) withdraw the requisition for the procurement item.

**R33-109-102. Re-solicitation.**

(1) In the event there is no response to an initial solicitation, the procurement official may:

(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 in Subsections (a) and (b) require the procurement unit to modify the solicitation documents.

(2) If the procurement unit 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 official shall:

(a) require the procurement unit to further modify the procurement documents; or

(b) cancel the requisition for the procurement item.

(3) An executive branch procurement unit may not reissue a canceled solicitation unless the procurement official determines the issues identified in the written justification for canceling the solicitation set forth in Section R33-109-103 have been resolved.

**R33-109-103. Cancellation Before Award but After Opening.**

(1) A solicitation under a standard procurement process may be canceled before award but after the opening of solicitation responses when the issuing procurement unit determines in writing that:

(a) the scope of work or other requirements contained in the solicitation documents were not met by any person and any solicitation responses have been determined to be either nonresponsive or not responsible;

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

(c) inadequate, erroneous, or ambiguous specifications or requirements were cited in the solicitation;

(d) the specifications in the solicitation have been or must be revised;

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

(f) the solicitation did not provide for consideration of all factors of cost to the procurement unit, such as cost of transportation, warranties, service, and maintenance;

(g) solicitation responses received show that the needs of the procurement unit can be satisfied by a less expensive procurement item differing from that in the solicitation;

(h) except as provided in Section 63G-6a-607, any otherwise acceptable solicitation responses received are at unreasonable prices, or only one solicitation response is received, and the procurement official cannot determine the reasonableness of the bid price or cost proposal;

(i) other reasons specified in Title 63G, Chapter 6a, Utah Procurement Code or administrative rule; or

(j) other circumstances deemed to constitute reasonable cause by the procurement official.

(2) Regardless of Subsection R33-109-103(1) a procurement unit may not cancel and reissue a solicitation:

(a) To steer a contract to a favored vendor; or

(b) Except as permitted under the protest and appeal provisions set forth in Title 63G, Chapter 6a Part 16, Protests and Title 63G, Chapter 6a Part 17, Procurement Appeals Board, to make a vendor who was previously disqualified or rejected in a solicitation for the procurement item eligible for a contract award for the same procurement item.

**R33-109-104. Alternative to Cancellation.**

In the event administrative difficulties are encountered before award but after the deadline for receipt of solicitation responses that may delay award beyond the vendors', offerors', or person's acceptance periods, the procurement unit should request the vendors, before expiration of their solicitation responses, to extend in writing the acceptance period, with consent of sureties, if any, to avoid the need for cancellation.

**R33-109-105. Award of a Contract After Cancellation for Cause or by Mutual Agreement.**

(1) If a contract awarded through a standard procurement process is canceled for cause or by mutual agreement within the first 12 months of the contract term and the procurement item is still needed by the procurement unit, the procurement official shall make a determination as to whether it is in the best interest of the procurement unit to award a contract for the balance of the scope of work, as set forth in the solicitation, to:

(a) the responsible vendor with a responsive solicitation response, meeting any minimum score thresholds set forth in the solicitation:

(i) having the next lowest bid in an invitation for bids procurement process and in accordance with the provisions set forth in 63G-6a, Part 6 Bidding, and Title R33; or

(ii) with the next highest total score or other authorized method to award a contract in accordance with:

(A) the request for proposals procurement process set forth in 63G-6a, Part 7, Requests for Proposals and Title R33;

(B) the approved vendor list procurement process set forth in Section 63G-6a-507 and Title R33; or

(C) the professional service or design professional procurement process set forth in 63G-6a, Part 15, Design Professional Services and Title R33; or

(b) issue a new solicitation for the procurement item.

(2) The procurement official shall consider the following when making a determination under Subsection (1):

(a) the fair and equitable treatment of any persons currently involved or that may be involved in the procurement process pertaining to the procurement item;

(b) the length of time that has passed between the initial procurement and cancellation of the awarded contract;

(c) the applicability and competitiveness of prices submitted in response to the initial procurement;

(d) the willingness of the vendor to maintain prices submitted in the vendor's initial response to the solicitation for the full scope of work or, as applicable, remaining proportionate scope of work;

(e) the vendor's availability and ability to perform the work;

(f) the existence of additional or new vendors who may be available and willing to submit responses to a new solicitation for the procurement item;

(g) costs and time delays to the procurement unit associated with conducting a new procurement; and

(h) other applicable issues unique to the solicitation or procurement item.

(3) This rule may not be used:

(a) If a contract is canceled by a procurement unit for convenience;

(b) To extend the contract beyond the contract period identified in the solicitation; or

(c) If a contract is canceled after the first 12 months of the contract period.

**R33-109-106. Cancellation of Award Before Contract Execution.**

(1) After an award is made, but before the execution of a contract or purchase order, the procurement official may cancel an award when it is in the best interest of the procurement unit or other allowable reasons under Utah Procurement Code in accordance with Sections 63G-6a-102, 63G-6a-902, and 63G-6a-903.

(2) To promote the purposes of the Utah Procurement Code and to ensure fairness and transparency, canceling an award under this section may occur when new information or changed circumstances become known to the procurement unit that made the award.

**R33-109-201. Rejection of a Solicitation Response.**

An issuing procurement unit may reject any solicitation responses, in whole or in part, as may be specified in the solicitation, when it is in the best interest of the procurement unit. In the event of a rejection of any bids, offers or other submissions, in whole or in part, the reasons for rejection shall be made part of the procurement file and shall be available for public inspection.

**R33-109-202. Conformity to Solicitation Requirements.**

(1) Any solicitation response that fails to conform to the essential requirements of the solicitation shall be rejected.

(2) Any solicitation response that does not conform to the applicable specifications shall be rejected unless the solicitation authorized the submission of alternate solicitation responses and the procurement item offered as alternates meet the requirements specified in the solicitation.

(3) Any solicitation response that fails to conform to the delivery schedule or permissible alternates stated in the solicitation shall be rejected.

**R33-109-204. Rejection for Nonresponsibility or Nonresponsiveness.**

(1) The procurement official:

(a) Shall, subject to Section 63G-6a-903 and, as applicable, Section 63G-6a-604, reject a bid if the bid is determined not responsive or the bid is submitted by a bidder determined to be not responsible;

(b) May reject a solicitation response to any other type of standard procurement process if the solicitation response is determined to be not responsive or the solicitation response is submitted by a person determined to be not responsible; and

(c) Subsections (a) and (b) shall be conducted in accordance with the definitions of Responsible and Responsive set forth in Section 63G-6a-103.

(2) When a 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.

(3) Any written findings with respect to such rejections shall be made part of the procurement file and available for public inspection.

**R33-109-301. Rejection for Suspension or Debarment.**

Solicitation responses received from any person that is suspended, debarred, or otherwise ineligible as of the deadline for receipt of solicitation responses shall be rejected.

**KEY: government purchasing, cancellations, rejections, debarment**

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