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

**R33-107. Request for Proposals.**

**R33-107-101. Conducting the Request for Proposals Standard Procurement Process.**

The request for proposals standard procurement process shall be conducted in accordance with the requirements set forth in Chapter 63G, Title 6a, Part 7, Requests for Proposals. The request for proposals process may be used by a procurement unit to select the proposal that provides the best value or is the most advantageous to the procurement unit. This rule provides additional requirements and procedures and must be used in conjunction with the Title 63G, Chapter 6a, Utah Procurement Code. Definitions in the Utah Procurement shall apply to this rule.

**R33-107-104. Exceptions to Terms and Conditions Published in the RFP.**

(1) Offerors requesting exceptions or additions to the standard terms and conditions published in the request for proposal (RFP) must include the exceptions or additions with the proposal response.

(2) Exceptions 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 or additions have been approved by the Attorney General's Office or other applicable legal counsel, and it is determined by the procurement official that it is not in the best interest of the procurement unit to republish the solicitation.

(3) Offerors may not submit requests for exceptions or additions by reference to a vendor's website or URL

(4) A procurement unit may refuse to negotiate exceptions or additions:

(a) that are determined to be excessive;

(b) that are inconsistent with similar contracts of the procurement unit;

(c) to warranties, insurance, or indemnification provisions that are necessary to protect the procurement unit after consultation with the Attorney General's Office or other applicable legal counsel;

(d) where the solicitation specifically prohibits exceptions or additions; or

(e) that are not in the best interest of the procurement unit.

(5) If negotiations are permitted, a procurement unit may negotiate exceptions or additions with offerors, beginning in order with the offeror submitting the fewest exceptions or additions to the offeror submitting the greatest number of exceptions or additions. Contracts may become effective as negotiations are completed.

**R33-107-105. Protected Records.**

The following are protected records and may be redacted by the vendor subject to the procedures described in this section in accordance with Title 63G, Chapter 2, Governmental Records Access and Management Act (GRAMA).

(1) Trade Secrets, as defined in Section 13-24-2.

(2) Commercial information or non-individual financial information subject to Subsection 63G-2-305(2).

(3) Other Protected Records under GRAMA.

**R33-107-105.5. Process for Requesting Non-Disclosure.**

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

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

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

**R33-107-106. Notification.**

(1) A person who complies with Section R33-107-105 shall be notified by the procurement unit before the public release of any information for which a claim of confidentiality has been asserted.

(2) Except as provided by court order, the procurement unit to whom the request for a record is made under GRAMA may not disclose a record claimed to be protected under Section R33-107-105 but which the procurement unit or State Records Committee determines should be disclosed until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal, is reached. Section R33-107-106 does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the State Records Committee. To the extent allowed by law, the parties to a dispute regarding the release of a record may agree in writing to an alternative dispute resolution process.

(3) Allowable disclosure of public records submitted in the RFP process will only be available after the selection of the successful offeror has been made public.

**R33-107-107. Process for Submitting Proposals with Protected Business Confidential Information.**

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

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

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

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

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

**R33-107-501.5. Minimum Score Thresholds.**

(1) A procurement unit may establish minimum score thresholds to advance proposals from one stage in the RFP process to the next, including contract award.

(2) If used, minimum score thresholds must be set forth in the RFP and clearly describe the minimum score threshold that proposals must achieve to advance to the next stage in the RFP process or to be awarded a contract.

(3) Minimum score thresholds:

(a) may be based on:

(i) minimum scores for each evaluation category;

(ii) the total of each minimum score in each evaluation category based on the total points available; or

(iii) a combination of Subsections (i) and (ii).

(b) 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, unless a written exception is provided by the procurement official.

**R33-107-601. Best and Final Offers.**

Best and Final Offers (BAFO) shall be conducted in accordance with the requirements set forth in Section 63G-6a-707.5. Rule R33-107 provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.

(1) BAFO process is an optional step in the evaluation phase of the RFP process in which offerors are requested to modify their proposals.

(2) The BAFO process may not be conducted as part of the contract negotiation process. It may only be conducted during the evaluation phase of the RFP process.

(3) A procurement unit may not use the BAFO process to allow offerors a second opportunity to respond to the entire RFP.

**R33-107-703. Evaluation Committee Procedures for Scoring Non-Priced Technical Criteria.**

(1)(a) The procurement unit may conduct a review of proposals to determine if:

(i) the person submitting the proposal is responsible;

(ii) the proposal is responsive; and

(iii) the proposal meets the mandatory minimum requirements set forth in the RFP.

(b) An evaluation committee may not evaluate proposals deemed non-responsive or not meeting the mandatory minimum requirements of the RFP, or from vendors determined to be not responsible.

(2) Before the evaluation and scoring of proposals, the procurement unit will meet to:

(a) explain the evaluation and scoring process;

(b) discuss requirements and prohibitions pertaining to:

(i) socialization with vendors as set forth in Section R33-124-104;

(ii) financial conflicts of interest as set forth in Section R33-124-105;

(iii) personal relationships, favoritism, or bias as set forth in Section R33-124-106;

(iv) disclosing confidential information contained in proposals or the deliberations and scoring of the evaluation committee; and

(v) ethical standards for an employee of a procurement unit involved in the procurement process as set forth in Section R33-124-108.

(c) review the scoring sheet and evaluation criteria set forth in the RFP; and

(d) provide a copy of Section R33-107-703 to the evaluation committee, employees of the procurement unit involved in the procurement, and any other person that will have access to the proposals.

(3) Before participating in any phase of the RFP process, each member of the evaluation committee must sign a written statement certifying that they do not have a conflict of interest.

(4) At each stage of the procurement process, the conducting procurement unit shall ensure that evaluation committee members, employees of the procurement unit and any other person participating in the procurement process:

(a) do not have a conflict of interest with any of the offerors;

(b) do not contact or communicate with an offeror concerning the procurement outside the official procurement process; and

(c) conduct or participate in the procurement process in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.

(5) In accordance with Section 63G-6a-707, the procurement unit shall appoint an evaluation committee.

(a) The evaluation committee shall:

(i) evaluate each responsive proposal submitted by a responsible offeror that has not been rejected from consideration under Title 63G, Chapter 6a, Utah Procurement Code using the criteria described in the RFP.

(ii) exercise independent judgment in the evaluation and scoring of the non-priced technical criteria in each proposal.

(b) Proposals must be evaluated solely on the criteria listed in the RFP.

(6) After each proposal has been independently evaluated by each member of the evaluation committee, each committee member independently shall assign a preliminary draft score for each proposal for each of the non-priced technical criteria listed in the RFP.

(a) After completing the preliminary draft scoring of the non-priced technical criteria for each proposal, the evaluation committee shall enter into deliberations to:

(i) review each evaluation committee member's preliminary draft scores;

(ii) resolve any factual disagreements;

(iii) modify their preliminary draft scores based on their updated understanding of the facts; and

(iv) derive the committee's final recommended consensus score for the non-priced technical criteria of each proposal.

(b) During the evaluation process, the evaluation committee may make a recommendation to the procurement unit that:

(i) a proposal be rejected for:

(A) being non-responsive;

(B) not meeting the mandatory minimum requirements; or

(C) not meeting any applicable minimum score threshold; or

(ii) an offeror be rejected for not being responsible.

(c) If an evaluation committee member does not attend an evaluation committee meeting, the meeting may be canceled and rescheduled.

(d) To score proposals fairly, an evaluation committee member must be present at each evaluation committee meeting and must review each proposal, including any presentations, interviews, or demonstrations. If an evaluation committee member fails to attend an evaluation committee meeting or leaves a meeting early or fails for any reason to fulfill the duties and obligations of a committee member, that committee member shall be removed from the committee. The remainder of the evaluation committee members may proceed with the evaluation, provided there are at least three evaluation committee members remaining.

(e) Attendance or participation on an evaluation committee via electronic means such as a conference call, a webcam, an online business application, or other electronic means is permissible.

(7)(a) The evaluation committee shall derive its final recommended consensus score for the non-priced technical criteria of each proposal using the following methods:

(i) the total of each individual evaluation committee member's scores for each proposal shall be the consensus score for the evaluation committee; or

(ii) an average of each individual evaluation committee member's scores for each proposal shall be the consensus score for the evaluation committee.

(b) The evaluation committee shall submit its final score sheet, signed and dated by each committee member, to the procurement unit for review.

(8) The evaluation committee may not change its consensus final recommended scores of the non-priced technical criteria for each proposal after the scores have been submitted to the procurement unit, unless the procurement unit authorizes that a best and final offer process is to be conducted.

(9) In accordance with Section 63G-6a-707, the issuing procurement unit shall:

(a) review the evaluation committee's final recommended scores for each proposal's non-priced technical criteria and correct any errors, scoring inconsistencies, and reported noncompliance with this chapter or cancel the solicitation;

(b) score the cost of each proposal based on the applicable scoring formula; and

(c) calculate the total combined score for each proposal.

(10)(a) The procurement official may remove a member of an evaluation committee for:

(i) having a conflict of interest or the appearance of a conflict of interest with a person responding to a solicitation;

(ii) having an unlawful bias or the appearance of unlawful bias for or against a person responding to a solicitation;

(iii) having a pattern of arbitrary, capricious, or clearly erroneous scores that are unexplainable or unjustifiable;

(iv) having inappropriate contact or communication with a person responding to a solicitation;

(v) socializing inappropriately with a person responding to a solicitation;

(vi) engaging in any other action or having any other association that causes the procurement official to conclude that the individual cannot fairly evaluate a solicitation response; or

(vii) any other violation of a law, rule, or policy.

(b) The procurement official may reconstitute an evaluation committee in any way deemed appropriate to correct an impropriety described in Subsection (10)(a). If an impropriety cannot be cured by replacing a member, the head of the issuing procurement unit may appoint a new evaluation committee, cancel the procurement or cancel and reissue the procurement.

**R33-107-704. Scoring of Evaluation Criteria, Other Than Cost, for Proposals in the RFP Process.**

Scoring shall be based upon each applicable evaluation criteria as set forth in the RFP.

**R33-107-705. Evaluation Committee Members Required to Exercise Independent Judgment.**

(1) Evaluators shall exercise independent judgment and not be inappropriately influenced by others.

(2) Evaluators may seek to increase their knowledge before scoring by asking questions and seeking appropriate information from the procurement unit. Otherwise, evaluators should not discuss proposals or the scoring of proposals with other persons not on the evaluation committee.

(3)(a) The exercise of independent judgment applies not only to possible inappropriate influences from outside the evaluation committee, but also to inappropriate influences from within the committee. It is acceptable for there to be discussion and debate within the committee regarding how well a proposal meets the evaluation criteria. However, open discussion and debate may not lead to coercion or intimidation by one committee member to influence the scoring of another committee member.

(b) Evaluators may not act on their own or in concert with another evaluation committee member to inappropriately steer an award to a favored vendor or to disfavor a particular vendor.

(c) Evaluators are required to report any attempts by others to improperly influence any evaluator's scoring to favor or disfavor a particular offeror.

(d) If an evaluator feels that the evaluator's independence has been compromised, the evaluator must recuse themselves from the evaluation process.

**R33-107-802. Publicizing Awards.**

(1) The following shall be disclosed after receipt of a GRAMA request and payment of any lawfully enacted and applicable fees:

(a) the contract entered into as a result of the selection and the successful proposal, except for those portions that are to be non-disclosed under Section R33-107-105;

(b) the unsuccessful proposals, except for those portions that are to be non-disclosed under Section R33-107-105;

(c) the rankings of the proposals;

(d) the names of the members of any evaluation committee;

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

(f) the written justification statement supporting the selection, except for those portions that are to be non-disclosed under Section R33-107-105.

(2) After due consideration and public input, the following has been determined by the Procurement Policy Board to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, and will not be disclosed by the governmental entity at any time to the public including under any GRAMA request:

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

(b) any individual scorer's or evaluator's notes, drafts, and working documents;

(c) non-public financial statements; and

(d) past performance and reference information, which is not provided by the offeror and which is obtained as a result of the efforts of the governmental entity. To the extent such past performance or reference information is included in the written justification statement; it is subject to public disclosure.

**R33-107-900. Public-Private Partnerships.**

Except as provided in Section 63G-6a-802, a procurement unit shall award a contract for a public-private partnership, as defined in Section 63G-6a-103, by the RFP standard procurement process set forth in Title 63G, Chapter 6a, Part 7, Requests for Proposals.

**KEY: government purchasing, Utah procurement rules, general procurement provisions, definitions**

**Date of Last Change: October 22, 2024**

**Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1); 63G-6a-707.5(13); 63G-6a-712(8)**