

R33. Government Operations, Purchasing and General Services.

R33-4. Supplemental Procurement Procedures.

R33-4-103. Specifications.

- (1) A public entity shall include in solicitation documents specifications for the procurement item sought.
- (2)(a) Each specification shall be drafted with the objective of clearly describing the procurement unit's requirements and encouraging competition.
 - (b) Each specification shall emphasize the functional or performance criteria necessary to meet the needs of the procurement unit.
 - (3) A persons with a conflict of interest, or who anticipates responding to the proposal for which the specifications are written, may not participate in writing specifications. A procurement unit may retain the services of a person to assist in writing specifications, scopes of work, requirements, qualifications, or other components of a solicitation. The person retained to assist in writing specifications may 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.
 - (a) Subsection R33-4-103(3) does not apply to the following:
 - (i) a design build construction project; and
 - (ii) other procurements determined in writing by the procurement official, or as applicable, the head of a procurement unit with independent procurement authority.
 - (b) Violations of this Subsection R33-4-103(3) may result in:
 - (i) the bidder or offeror being declared ineligible for award of the contract;
 - (ii) the solicitation being canceled;
 - (iii) termination of an awarded contract; or
 - (iv) any other action determined to be appropriate by the procurement official, or as applicable, the head of a procurement unit with independent procurement authority.
 - (4) Requirements for brand name and equal specifications are as follows:
 - (a) Brand name or equal specifications may be used when:
 - (i) the phrase "or equivalent" is included within the specification; and,
 - (ii) as many other brand names as practicable are also included in the specification.
 - (b) Brand name or equal specifications shall include a description of the particular design and functional or performance characteristics required. Specifications unique to the brands shall be described in sufficient detail that another person can respond with an equivalent brand.
 - (c) When a manufacturer's specification is used in a solicitation, the solicitation shall state the minimum acceptable requirements of an equivalent. When practicable, the procurement unit shall name at least three manufacturer's specifications.
 - (5) A brand name may be required if:
 - (a) only one brand can meet the requirements set forth in the specifications, and the procurement unit solicits from as many providers of the brand as practicable; and
 - (b) there is only one provider that can meet the requirements set forth in the specifications and the procurement unit conducts the procurement in accordance with Section 63G-6a-802 and Section R33-8-101b.

R33-4-109. Procedures When Two Bids, Quotes, or Statement of Qualifications Cannot Be Obtained.

- (1) The requirement that a procurement unit obtain a minimum of two bids, quotes, or statements of qualifications is waived when only one vendor submits a bid, provides a quote, or submits a statement of qualifications under the following circumstances:
 - (a) a solicitation meeting the public notice requirements of Section 63G-6a-112 results in only one vendor submitting a solicitation response;
 - (b) vendors on a multiple award contract, prequalification, or approved vendor list fail to respond to the procurement unit; or
 - (c) a procurement unit makes a reasonable effort to invite each vendor known to the procurement unit to submit a solicitation response
 - (i) "Reasonable effort" as used in Subsection (c) means:
 - (A) public notice under Section 63G-6a-112;
 - (B) an electronic or manual search for vendors within the specific industry;
 - (C) contacting industry-specific associations or manufacturers for the names of vendors within that industry; or
 - (D) a determination by the procurement official that a reasonable effort has been made.
- (2) Before accepting a solicitation response from only one vendor, the procurement official, shall consider:
 - (a) whether pricing is fair and reasonable;
 - (b) canceling the procurement; and
 - (c) a bid security requirement.
- (3) The procurement official shall maintain records documenting the circumstances and reasons why fewer than two solicitation responses were obtained.

R33-4-110. Use of Electronic, Telephone, or Written Quotes.

- (1) "Quote" means a purchasing process that solicits pricing information from several sources.

(2) "Quotation" means a statement of price, terms of sale, and description of the procurement item offered by a vendor to a procurement unit. A quotation is nonbinding and does not obligate a procurement unit to make a purchase or a vendor to make a sale.

(3) "Electronic" quote means a price quotation provided by a vendor through electronic means such as the internet, online sources, email, an interactive web-based market center, or other technology.

(4) A procurement unit may use electronic, telephone, or written quotes to obtain pricing and other information for a procurement item within the small purchase or approved vendor threshold limits established by rule provided:

(a) quotations are for the same procurement item, including terms of sale, description, and quantity of goods or services;

(b) the procurement unit informs the vendor that the quote is for a governmental entity and an inquiry is made as to whether the vendor is willing to provide a price discount to a governmental entity; and

(c) the procurement unit maintains a public record that includes:

(i) the name of each vendor supplying a quotation; and

(ii) the amount of each vendor's quotation.

(5) An executive branch procurement unit, subject to this rule:

(a) may obtain electronic, telephone, or written quotations for a procurement item costing less than \$10,000;

(b) shall send a request to obtain quotations for a procurement item costing more than \$10,000 to the division of state purchasing who shall obtain quotations for executive branch procurement units for procurement items costing more than \$5,000; and

(c) may not obtain quotations for a procurement item available on a state contract unless otherwise specified in the terms of a solicitation or contract or authorized by rule or statute.

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