

R33. Government Operations, Purchasing and General Services.

R33-9. Cancellations, Rejections, and Debarment.

R33-9-101. Cancellation Before Opening.

(1) A solicitation under a standard procurement process may be canceled prior to 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 cancelled, the reasons for cancellation shall be made part of the procurement file and shall be available for public inspection and the procurement unit shall:

- (a) re-solicit new responses to a solicitation using a standard procurement process using the same or revised specifications;
- or,
- (b) withdraw the requisition for the procurement item(s).

R33-9-102. 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 (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(s).
- (3) An executive branch procurement unit may not reissue a canceled solicitation unless:
 - (a) The procurement official determines that all of the issues identified in the written justification for canceling the solicitation set forth in R33-9-103 have been resolved.

R33-9-103. Cancellation Before Award But After Opening.

- (1) A solicitation under a standard procurement process may be cancelled 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 all 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(s) 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 indicate 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, all 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 63G-6a or Administrative Rule; or
 - (j) other circumstances deemed to constitute reasonable cause by the procurement official
- (2) Notwithstanding the above, 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 Utah Code 63G-6a, Parts 16 and 17, 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.

R33-9-104. Alternative to Cancellation.

(1) In the event administrative difficulties are encountered before award but after the deadline for receipt of solicitation responses that may delay award beyond the bidders', offerors', or person's acceptance periods, the bidders, offerors, or persons should be requested, before expiration of their solicitation responses, to extend in writing the acceptance period (with consent of sureties, if any) in order to avoid the need for cancellation.

R33-9-105. Award of a Contract After Cancellation for Cause or by Mutual Agreement.

(1) If a contract awarded through a standard procurement process is cancelled for cause or by mutual agreement within the first twelve 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 all 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 Utah Code 63G-6a, Part 6 and Administrative Rule R33; or
- (ii) with the next highest total score or other authorized method to award a contract in accordance with the provisions of:
 - (A) the request for proposals procurement process set forth in Utah Code 63G-6a, Part 7 and Administrative Rule R33;
 - (B) the approved vendor list procurement process set forth in Utah Code 63G-6a-507 and R33; or
 - (C) the design professional procurement process set forth in Utah Code 63G-6a, Part 15 and Administrative Rule 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 all 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 cancelled 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 cancelled after the first twelve months of the contract period.

R33-9-201. Rejection of a Solicitation Response.

(1) An issuing procurement unit may reject any or all 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 or all 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.

R33-9-202. Conformity to Solicitation Requirements.

- (1)(a) Any solicitation response that fails to conform to the essential requirements of the solicitation shall be rejected.
- (b) 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(s) offered as alternates meet the requirements specified in the solicitation.
- (c) Any solicitation response that fails to conform to the delivery schedule or permissible alternates stated in the solicitation shall be rejected.
- (2) A solicitation response 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 or offeror's liability for the procurement, since to allow the bidder or offeror to impose such conditions or take exceptions would be prejudicial to another person. For example, solicitation responses shall be rejected in which the person:
 - (a) for commodities, protects against future changes in conditions, such as increased costs, if total possible costs to the procurement unit cannot be determined;
 - (b) fails to state a price and indicates that price shall be the price in effect at time of delivery or states a price but qualifies it as being subject to price in effect at time of delivery;
 - (c) when not authorized by the solicitation, conditions or qualifies a bid by stipulating that it is to be considered only if, before date of award, the bidder or offeror receives (or does not receive) an award under a separate solicitation;
 - (d) requires that the procurement unit is to determine that the bidder or offeror's product meets applicable specifications; or
 - (e) limits rights of the State under any contract clause.

R33-9-204. 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) All written findings with respect to such rejections shall be made part of the procurement file and available for public inspection.

R33-9-301. Rejection for Suspension/Debarment.

(1) 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.

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