

R33. Government Operations, Purchasing and General Services.

R33-11. Form of Bonds.

R33-11-101. Definitions.

(1)(a) Whenever used in this Rule, the terms "bid", "bidder" and "bid security" apply to all procurements, including non-construction procurements, when the procurement documents, regardless of the procurement type, require securities and/or bonds.

(b) All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-11-201. Bid Security Requirements for Projects.

(1) Invitations for bids and requests for proposals for construction contracts estimated to exceed \$50,000 shall require the submission of bid bond in an amount equal to at least 5% of the bid, at the time the bid is submitted.

(2) Invitations for Bids and Requests for Proposals for other procurements may require the submission of a bid security, including specifications for the form and type of bid security, when the procurement official determines it is in the best interest of the procurement unit.

(3) If a person fails to include the required bid security, the bid shall be deemed nonresponsive and ineligible for consideration of award except as provided by Sections R33-6-108, R33-6-109 or R33-11-202.

(4) The procurement official may require an acceptable bid security on projects that are for amounts less than the standard amount set forth in Subsection R33-11-201(1).

R33-11-202. Acceptable Bid Security Not Furnished.

(1) If acceptable bid security is not furnished, the bid shall be rejected as nonresponsive, unless the failure to comply is determined by the chief procurement officer or head of a procurement unit with independent procurement authority 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 including being issued by a surety meeting the requirements of Rule R33-11-303(1)(b) and the contractor provides acceptable bid security by the close of business of the next succeeding business day after the procurement notified the contractor of the defective bid security; or

(b) only one bid is received, and there is not sufficient time to re-solicit; or

(c) the amount of the bid security submitted, though less than the amount required by the Invitation for Bids, is equal to or greater than the difference in the price stated in the next higher acceptable bid; or

(d) the bid security becomes inadequate as a result of the correction of a mistake in the bid or bid modification, if the bidder increases the amount of guarantee to required limits within 48 hours after the bid opening.

(2) If the successful bidder fails or refuses to enter into the contract or furnish the additional bonds required under Rule R33-11-2, then the bidder's bid security may be forfeited.

R33-11-301. Performance Bonds for Construction Contracts.

A performance bond is required for all construction contracts in excess of \$50,000, in the amount of 100% of the contract price. The performance bond shall be delivered by the contractor to the procurement unit within fourteen days of the contractor receiving notice of the award of the construction contract. If a contractor fails to deliver the required performance bond, the contractor's bid/offer shall be rejected, its bid security may be enforced, and award of the contract may be made to the responsible bidder or offeror with the next lowest responsive bid or highest ranked offer.

R33-11-302. Surety or Performance Bonds for Non-construction Procurement Items.

(1) A surety or performance bond may be required on any non-construction contract if the procurement official deems it necessary to guarantee the satisfactory completion of a contract, provided:

(a) the solicitation contains a statement that a surety or performance bond is required in an amount:

(i) equal to the amount of the bid, offer, or other response;

(ii) equal to the project budget or estimated project cost, if the budget or estimated project cost is published in the solicitation documents;

(iii) equal to the previous contract cost, if the previous contract cost is published in the solicitation documents; or

(iv) the Invitation for Bids or Request for Proposals contains a statement that a surety or performance bond, in an amount less than the amounts contained in (a), is required; and

(b) The solicitation contains a detailed description of the work to be performed for which the surety or performance bond is required.

(2) Surety or performance bonds should not be used to unreasonably eliminate competition or be of such unreasonable value as to eliminate competition.

R33-11-303. Payment Bonds.

(1) A payment bond is required for all construction contracts in excess of \$50,000, in the amount of 100% of the contract price. If a contractor fails to deliver the required payment bond, the contractor's bid or offer shall be rejected, its bid security may be enforced, and award of the contract shall be made to the responsible bidder or offeror with the next lowest responsive bid or highest ranked offer. For executive branch procurement units:

(a) bid bonds, payment bonds and performance bonds submitted by vendors to executive branch procurement units must be from sureties meeting the requirements of Subsection R33-11-303(1)(b) and must be on the required bond forms; and

(b) a surety firm must be authorized to do business in Utah and be listed in the U.S. Department of the Treasury Circular 570, "Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies," for an amount not less than the amount of the bond to be issued.

(2) The procurement official may waive any bonding requirement if it is determined in writing by the procurement official that:

(a) bonds cannot reasonably be obtained for the work involved;

(b) the cost of the bond exceeds the risk to the procurement unit; or

(c) bonds are not necessary to protect the interests of the procurement unit.

(3) If the procurement unit fails to obtain a payment bond it shall be subject to Section 14-1-19.

KEY: bid security, performance bonds, payment bonds, procurement procedures

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