

CHAPTER VIII
PROCUREMENT

§ 8100 BACKGROUND

§ 8101 Policy

This shall be known as the Uintah Water Conservancy District's (the "District") Purchasing Policy (the "Policy").

§ 8102 Purpose

The purpose of this policy is to identify the procedure for approval and payment for all purchases or encumbrances by the District and to be sure that all such payments and encumbrances are fair and reasonable and are not in conflict with applicable law. The Policy is applicable to all Board Trustees and employees.

§ 8103 Applicability of the Utah Procurement Code

The District is subject to the Utah Procurement Code (Utah Code Ann. §§ 63G-6a-101 et. seq.) and, as such, purchases by the District shall be made in accordance with applicable sections of the Procurement Code, as now constituted or as it may be amended and modified from time-to-time. For purposes of the application of the Procurement Code and this Policy, the District is a procurement unit with independent procurement authority.

§ 8103.01 Exception - State or Federal Law or Regulations

Notwithstanding the provisions of Subsection 8103 above, whenever any purchase or encumbrance is made with state or federal funds and applicable state or federal law or regulations are in conflict with this Policy, to the extent that following the provisions of this Policy might jeopardize the use of those funds or future state or federal funds, such conflicting provisions of this Policy shall not apply and the District shall follow the procedure required by the applicable state or federal law or regulation.

§ 8103.02 Exception - Federal Funding/Grants

When a procurement involves the expenditure of federal assistance or contract funds, the District shall comply with any mandatorily applicable federal law and regulations which are not reflected in this Policy. This Policy shall not prevent the District from complying with the terms and conditions of any grant, gift, or bequest that are otherwise consistent with law.

§ 8200 DEFINITIONS

As used in the Policy, the following definitions shall be applicable.

§ 8201 Board

The legislative body of the District is referred to herein as the “Board”. For purposes of the Procurement Code and Policy, the Board is the applicable rule making authority for the District.

§ 8202 Statutory Definitions

The definitions of terms set forth in Utah Code Ann. §§ 63G-6a-103 and -104, as they may be amended from time-to-time are, to the extent applicable to this Policy and the activities of the District, incorporated herein by this reference.

§ 8203 Procurement Officer

The General Manager shall be the District's “Procurement Officer” and other employees of the District may act as Procurement Officers as authorized and delegated by the Board and/or the Procurement Officer. References in this Policy to the Procurement Officer shall include any “designee” or “delegate” designated by the Procurement Officer or the Board.

§ 8204 Additional Definitions

- a. “Act” or “Procurement Code” means the Utah Procurement Code found in Title 63G, Chapter 6a of the Utah Code.
- b. "Actual Costs" means direct and indirect costs which have been incurred for services rendered, supplies delivered, or construction built, as distinguished from allowable costs.
- c. "Adequate Price Competition” requires a minimum of two competitive bids, proposals, or quotes from responsive bidders or offerors.
- d. "Bid Bond" is either cash or an insurance agreement, accompanied by a monetary commitment, by which a third party (the Surety) accepts liability and guarantees that the bidder will not withdraw the bid. The bidder will furnish bonds in the required amount, and if the contract is awarded to the bonded bidder, the bidder must accept the contract as bid or the cash will be forfeited or the surety will pay the specified bond amount to the District.
- e. "Bid Rigging" is an agreement among potential competitors to manipulate the competitive bidding process, for example, by agreeing not to bid, to bid a specific price, to rotate bidding, or to give kickbacks.
- f. "Bid Security" means the deposit of cash or a certified check, cashier's check, bank draft, money order, or bid bond submitted with a bid and serving to guarantee to the District that

the bidder, if awarded the contract, will execute such contract in accordance with the bidding requirements and the contract documents.

g. "Brand Name or Equal Specification" means a specification which uses a brand name specification to describe the standard of quality, performance, and other characteristics being solicited, and which invites the submission of equivalent products.

h. "Brand Name Specification" means a specification identifying one or more products by manufacturer name, product name, unique product identification number, product description, SKU or catalogue number.

i. "Collusion" occurs when two or more persons act together to achieve a fraudulent or unlawful act. Collusion inhibits free and open competition in violation of law.

j. "Cost Analysis" means an evaluation of cost data for the purpose of arriving at estimates of costs to be incurred, prices to be paid, costs to be reimbursed, or costs actually incurred.

k. "Cost Data" means factual information concerning the cost of labor, materials, overhead, and other cost elements which are expected to be incurred or which have actually been incurred by the contractor in performing the contract.

l. "Cronyism" is an anticompetitive practice that may violate federal and state antitrust and procurement laws. Cronyism in government contracting is a form of favoritism where contracts are awarded on the basis of friendship, association or political connections instead of fair and open competition.

m. "Manager" as used in this Policy refers to the "General Manager".

n. "Mandatory Requirement" means a condition set out in the specifications/statement of work that must be met without exception.

o. "Minor Irregularity" is a variation from the solicitation that does not affect the price of the bid, offer, or contract or does not give a bidder/offeror an advantage or benefit not shared by other bidders/offerors, or does not adversely impact the interests of the District.

p. "New Technology" means any invention, discovery, improvement, or innovation that was not available to the District on the effective date of the contract, whether or not patentable, including, but not limited to, new processes, emerging technology, machines, and improvements to or new applications of existing processes, machines, manufactures and software. Also included are new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable and any new process, machine, including software, and improvements to, or new applications of, existing processes, machines, manufactures and software.

q. "Participating Addendum" means an agreement issued in conjunction with a Cooperative Contract that authorizes a public entity such as the District to use the Cooperative Contract.

r. "Payment Bond" is a bond that guarantees payment for labor and materials expended on the contract.

s. "Price Analysis" means the evaluation of price data without analysis of the separate cost components and profit.

t. "Price Data" means factual information concerning prices for procurement items.

u. "Surety Bond" (performance bond) means a promise to pay the District a certain amount if the principal (contractor) fails to meet some obligation, such as fulfilling the terms of a contract. The surety bond protects the District against losses resulting from the principal's failure to meet the obligation. In the event that any obligation is not met, the District may recover its losses via the bond.

§ 8300 GENERAL PROVISIONS

§ 8301 Procurement Officer

Except as otherwise specifically authorized by the Board, no officer or employee of the District shall purchase for and on behalf of the District any material or supplies, goods, wares, merchandise, or services of any kind or character, except through the Procurement Officer or his/her designee, and no voucher, check or other method of payment shall be honored if this procedure is not followed; provided, however, that this Subsection shall not apply to emergency purchases as specifically provided in Subsection 89101.05 of this Policy.

§ 8302 Approval of Purchases

The Board must approve an annual budget of the District. Notwithstanding the foregoing, however, the Procurement Officer, and/or any other person designated by the Board to act as the "budget officer" and/or the "financial officer" of the District under the provisions of Utah Code Ann. §§ 17B-1-601 et. seq., may issue payroll checks and pay expenditures when due, and make transfers from one fund to another as part of routine bookkeeping procedures. Notwithstanding anything contained in this Policy to the contrary, however, the Board will review and approve all District expenditures on a quarterly or more frequent basis.

§ 8303 Availability of Funds

No purchase shall be made and no encumbrance shall be incurred unless funds sufficient to cover the purchase or encumbrance are available and the purchase is approved by the appropriate District officials as herein provided.

§ 8304 Delivery of Goods

No officer or employee of the District shall request any merchant, dealer or other vendor to deliver goods to the District other than in compliance with the requirements of this Policy and pursuant to any required approval from the Board or the Procurement Officer, except in the case of an emergency purchase as provided in Subsection 89101.05 of this Policy.

§ 8305 Cooperative Purchasing and Purchasing Preferences

§ 8305.01 Cooperative Purchasing

Nothing contained in this section 8300 shall be construed to limit the ability of the District to purchase a procurement item from another procurement unit or join with other units of government in centralized or cooperative purchasing plans or systems, with proper authorization, including participating in state or federal public cooperative procurement contracts, as provided in Part 21 of the Procurement Code, entitled “Interaction Between Procurement Units”.

- a. Cooperative purchasing will be conducted in accordance with the requirements set forth in Section 63G-6a-2105 of the Act.
- b. In accordance with Section 63G-6a-2105, the District may obtain procurement items from state cooperative contracts.
 - i. The District may request additional volume discount pricing for large volume orders, provided the state cooperative contractor is willing to offer additional discounts for large volume orders, by issuing a “Request for Price Quotations” to a vendor on a state cooperative contract for the procurement item being purchased. The District may not, however, coerce, intimidate or in any way compel a vendor on a state cooperative contract to offer additional discount pricing.
 - ii. The Request for Price Quotations shall include:
 - (1) A detailed description of the procurement item;
 - (2) The estimated number or volume of procurement items that will be purchased;
 - (3) The period of time that price quotations will be accepted, including the date and time the price quotations will be opened;
 - (4) The manner in which price quotations will be accepted;
 - (5) The place where price quotations shall be submitted; and
 - (6) The period of time the price quotation must be guaranteed.
 - iii. Price quotations shall be kept confidential until after the contract has been awarded and signed and may not be disclosed to other vendors on state cooperative contracts until after the contract has been awarded and signed. Email quotations are acceptable.

- iv. Price quotations will be opened in the presence of one or more witnesses.
- c. A state cooperative contract may not be used for an anti-competitive practice such as:
 - i. Bid rigging;
 - ii. Steering a contract to a preferred state cooperative contractor;
 - iii. Utilizing auction techniques where price quotations are improperly disclosed and contractors bid against each other's price;
 - iv. Disclosing pricing or other confidential information prior to the date and time of the opening; or
 - v. Any other practice prohibited by the Procurement Code.
- d. All sales to the District resulting from quotations received under the process conducted in accordance with Subsection 8305.01 b. will be recorded as usage under the existing state cooperative contract, are subject to the administrative fee associated with the state cooperative contract, and will be reported to the Division of Purchasing and General Services.

§ 8305.02 Preference for State Products and Resident Contractors

Section 63G-6a-1002 of the Procurement Code provides for a reciprocal preference for the providers of procurement items produced, manufactured, mined, grown, or performed in Utah and Section 63G-6a-1003 provides a reciprocal preference for resident Utah contractors. In the event more than one equally low, preferred bidder or contractor qualifies for the reciprocal preference, the Procurement Officer shall consider the preferred bidders or contractors to be tied and will follow the process specified in Section 63G-6a-608 of the Procurement Code and Subsection 8803.14 of this Policy.

§ 8306 Purchase Records

§ 8306.01 Invoices and Receipts

Invoices prepared by the vendor, cash register receipts, and/or other written documentation to substantiate District expenditures will be maintained as part of the District's financial records in accordance with customary procedures for public entities such as the District. Whenever possible, original invoices or digital copies will be used as supporting documentation for District purchases.

§ 8306.02 Penalty for Double Payment

An intentional effort on the part of a supplier to obtain a double payment may serve as the basis for a "debarment" under which that supplier will be precluded from providing materials, goods and/or services to the District for a prescribed time. Similarly, any intentional effort on the part of a District employee to receive a double reimbursement may result in sanctions, including termination.

§ 8306.03 Use of Forms

All departments are required to file with the Procurement Officer detailed requisitions for their requirements of supplies, contractual services, materials and equipment.

§ 8307 Surplus Property and Salvage

§ 8307.01 Disposal of Surplus Property

Surplus property having a value of \$5,000 or less may be disposed of in a commercially reasonable manner as the Procurement Officer sees fit, with all proceeds of the disposal to be the property of the District. Surplus property with a value in excess of **\$5,000** may not be disposed of until the Procurement Officer has declared the property to be surplus, after which it may be disposed of for the benefit of the District in a commercially reasonable manner as directed by the Procurement Officer. This requirement shall not apply when the surplus property, such as a vehicle or equipment, is being “traded in” on the purchase of substitute property, provided that the acquisition of the substitute property is in conformance with the requirements of this Policy.

§ 8307.02 Salvage

Metal and other items of some residual value may be salvaged by employees of the District while working on District facilities and improvements. Such salvaged items continue to be the property of the District and are to be disposed of accordingly. As a consequence, all receipts from salvaging such items shall be the property of the District and shall be safeguarded and accounted for as such.

§ 8307.03 Donation, Disposal, or Destruction of Surplus Property

The Procurement Officer may donate to a charitable organization, destroy, or dispose of as waste any surplus property that is worth less than **\$1,000** if:

- a. The cost of selling the surplus property is greater or equal to the value of the surplus property; or
- b. The surplus property is no longer usable; or
- c. The surplus property is damaged and either cannot be repaired or the cost of repair is greater than or equal to the value of the surplus property in a repaired state; or
- d. The surplus property can be replaced for less than the cost of repairing the surplus property.

§ 8307.04 Disposal of Excavated and other Material

The Procurement Officer or his designee is authorized to dispose of surplus excavated materials, or other materials from the District's construction projects as may be specified within its project specifications, with or without monetary consideration, in a manner to accomplish the purposes herein recited and determined by him best to serve the interest of the District.

§ 8308 Inspection

The Procurement Officer or his designee shall cause to be inspected, or supervise the inspection of, all deliveries of supplies, materials and equipment to determine their conformance with the specifications set forth in any applicable contract. The Procurement Officer is to be notified by the responsible employee forthwith of any item not received within 30 days after a reasonable delivery time has elapsed.

§ 8400 CONTRACTUAL TERMS

§ 8401 Multi-Year Contracts

The District may enter into multi-year contracts in accordance with Section 63G-6a-1204 of the Act. In particular, a contract for supplies or services may be entered into for a period of time, up to five years, deemed to be in the best interest of the District; provided that the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds. Prior to the utilization of a multi-year contract, it should be determined in writing that estimated requirements cover the period of the contract and are reasonably firm and continuing and that a multi-year contract will serve the best interest of the District by encouraging effective competition or otherwise promoting economies in District procurement.

§ 8401.01 In Excess of Five Years

Notwithstanding the foregoing, or anything to the contrary in this Policy, a contract may be entered into for a period in excess of five years, or for an indeterminate period that is terminable at-will by the District, with or without cause, as provided in Section 63G-6a-1204.

§ 8401.02 Availability of Funds

When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the multi-year contract shall be canceled and the contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred

but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriation available for that purpose.

§ 8402 Type of Contract

§ 8402.01 Generally

Subject to the limitations of this section 8402, any type of contract which will promote the best interest of the District may be used; provided that, if a contract other than a firm, fixed-price contract will be used, the Procurement Officer must make a written determination as required by Section 63G-6a-1205(3) of the Act that the proposed contractor's accounting system will permit the timely development of all necessary cost data in the form required by the specific contract type contemplated; the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles; and the use of a specified type of contract, other than a firm, fixed-price contract, is in the best interest of the District taking into consideration the criteria specified in Section 63G-6a-1205(3)(c). The various contract types that may be used are identified in Section 63G-6a-1205(4).

§ 8402.02 Cost-Plus-a-Percentage-of-Cost

As provided in Section 63G-6a-1205(5) of the Act, the District may not enter into a cost-plus-a-percentage-of-cost contract unless the contract form is approved by the Procurement Officer, it is standard practice in the industry to obtain the subject procurement item through any cost plus contract; and a percentage and the method of calculating costs stated in the contract are in accordance with industry standards.

§ 8402.03 Cost Reimbursement

A cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the District than any other type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract, and the proposed contractor has an adequate accounting system to timely develop cost data and to allocate costs in accordance with generally accepted accounting principles.

§ 8403 Installment Payments

The District may make installment payments in accordance with Section 63G-6a-1208 of the Act.

§ 8500 SMALL PURCHASES

§ 8501 General

Small purchases shall be conducted in accordance with the requirements set forth in Section 63G-6a-408 of the Act. This section 8500 provides additional requirements and procedures and is to be used in conjunction with the Procurement Code.

§ 8501.01 Definition

A "Small Purchase" is a procurement conducted by the District without using a standard procurement process.

§ 8501.02 Thresholds

Small Purchase thresholds are as follows:

- a. The "Individual Procurement Threshold" is a maximum amount of **\$2,000** for a procurement item;
 - i. For individual procurement item(s) costing up to **\$2,000**, the District may select the best source by direct award and without seeking competitive bids or quotes. See subsection 8504.01 for quotes.

§ 8501.03 Vendor Prequalification

The District will follow the process described in Section 63G-6a-403 of the Act to prequalify potential vendors and Section 63G-6a-404 to develop an approved vendor list, or Part 15 of the Procurement Code for the selection of architectural and engineering services.

§ 8502 Small Purchases Threshold for Architectural and Engineering Services

§ 8502.01 Threshold

The small purchase threshold per individual provider for architectural or engineering services is a maximum amount of **\$200,000** per budget year.

§ 8502.02 Procedure

Architectural or engineering services may be procured, up to a maximum of **\$200,000**, by direct negotiation after reviewing the qualifications of a minimum of two architectural or engineering firms.

§ 8502.03 Specifications

The District will include minimum specifications when using the small purchase threshold for architectural and engineering services.

§ 8503 Small Purchases Threshold for Construction Projects

§ 8503.01 Threshold

The small construction project threshold is a maximum of **\$2,500,000** for direct construction costs, including design and allowable furniture or equipment costs;

§ 8503.02 Procedure

The District will follow the process described in Section 63G-6a-403 of the Act to prequalify potential vendors and in Section 63G-6a-404 to develop an Approved Vendor List, or other applicable selection methods described in the Procurement Code for construction services.

§ 8503.03 Specifications

Minimum specifications will apply when using the small purchases threshold for construction projects.

§ 8503.04 Up to \$75,000

The District may procure small construction projects up to a maximum of **\$75,000** by direct award without seeking competitive bids or quotes after documenting that all building code approvals, licensing requirements, permitting and other construction related requirements will be met. The awarded contractor must certify that the contractor is capable of meeting the minimum specifications of the project.

§ 8503.05 Over \$75,000

Between \$75,000 and \$2,500,000, the District may invite at least three contractors from the approved vendor list to submit quotes or bids that include minimum specifications, and may award the work to the contractor with lowest quote or bid that meets the specifications after documenting that all applicable building code approvals, licensing requirements, permitting and other construction related requirements will be met. If an approved vendor list is not established under Sections 63G-6a-403 and -404 of the Act, the District will procure construction projects costing more than **\$75,000** using an invitation to bid or other approved source selection method outlined in the Procurement Code. The District may do the same for construction projects that cost less than **\$75,000**, in the District's discretion.

§ 8504 Quotes for Small Purchases between \$2,001 and \$75,000:

§ 8504.01 From \$2,001 to \$5,000

For procurement item(s) other than architectural and engineering services, other professional or consulting services, or construction, where the cost is greater than **\$2,000** up to a maximum of **\$5,000**, the District may select the best source by direct award and without seeking competitive bids or quotes.

§ 8504.02 Above \$5,000 to \$75,000

For such procurement item(s) costing more than **\$5,000**, up to a maximum of **\$75,000**, the District will obtain at least two competitive quotes that include minimum specifications and may purchase the procurement item from the responsible vendor offering the lowest quote that meets the specifications, or may use state contracts, or if not practicable to obtain two quotes or to use the lowest quote- then provide a written explanation and Procurement Officer approval.

§ 8504.03 Above \$75,000

For procurement item(s) costing more than **\$75,000**, the District will conduct an invitation for bids or other procurement process outlined in the Procurement Code.

§ 8504.04 Public Record

The names of the vendors offering quotations or bids and the date and amount of each quotation or bid will be recorded and maintained as a governmental record.

§ 8505 Small Purchases of Services of Professionals, Providers, and Consultants

§ 8505.01 Up to \$200,000

The small purchase threshold for professional service providers and consultants is a maximum amount of **\$200,000** per budget year.

§ 8505.02 Procedure

After reviewing the qualifications of a minimum of two professional service providers or consultants, the District may obtain professional services or consulting services:

- a. Up to a maximum cost of **\$75,000** by direct negotiation; or
- b. Over **\$75,000** up to a maximum of **\$200,000** by obtaining a minimum of two quotes.

§ 8505.03 Cost Not Primary

The District need not select the professional service provider presenting the lowest cost quotation, but may instead base the selection on other documented factors such as experience, knowledge and reputation.

§ 8506 Optional Competitive Bidding

Notwithstanding the foregoing, the District may require any acquisition of supplies, materials or equipment to be competitively bid if, in the determination of the Board or the Procurement Officer, such action would be in the best interest of the District.

§ 8507 Petty Cash

A limited amount, as approved by the Procurement Officer or designee, of “petty cash” may be maintained at the District offices or facilities to be used for small purchases that are needed before regular purchasing procedures can be implemented. All petty cash slips or other proof of the amount of the petty cash expenditure should be signed by the employee responsible for the purchase and approved by either the Procurement Officer, or designee, or the person responsible for accounts payable of the District. Whenever feasible, the items purchased are to be listed on the petty cash reimbursement check or the petty cash envelope/register.

§ 8508 Open Charge Accounts

The District, for convenience, may maintain one or more open charge accounts with vendors who regularly provide supplies and materials. Receipts are to be maintained for all credit card purchases and vendor statements are to be reconciled against those receipts prior to making credit card payments. Unless there is a dispute arising from the reconciliation or otherwise, or sufficient funds are not immediately available, all credit card charges are to be timely paid so as to avoid finance charges. No open charge account is to be utilized to circumvent the competitive requirements of this Policy.

§ 8600 VENDOR PREQUALIFICATION

§ 8601 Prequalification of Potential Vendors

General procurement provisions, including prequalification of potential vendors, approved vendor lists, and small purchases, will be conducted in accordance with the requirements set forth in Sections 63G-6a-402 through -408 of the Act. This section 8600 provides procedures and is to be used in conjunction with the Procurement Code.

§ 8602 Approved Vendor Lists.

§ 8602.01 Thresholds

The District may establish approved vendor lists in accordance with the requirements of Sections 63G-6a-403 and -404 of the Act.

- a. Contracts or purchases from an approved vendor list may not exceed the following thresholds:
 - i. Construction Projects: **\$2,500,000** per contract, for direct construction costs, including design and allowable furniture or equipment costs, awarded using an invitation for bids or a request for proposals;
 - ii. Professional and General Services, including architectural and engineering services: **\$200,000**; and
 - iii. Information Technology: **\$500,000**.

b. Thresholds for other approved vendor lists may be established by the Procurement Officer.

§ 8700 SPECIFICATIONS

§ 8701 Content

The District will include in solicitation documents specifications for the procurement item(s) being sought.

§ 8701.01 Economy and Competition

Specifications will be drafted with the objective of clearly describing the District's requirements and encouraging competition.

- a. Specifications will emphasize the functional or performance criteria necessary to meet the needs of the District.
- b. All specifications prepared for the solicitation of bids or proposals will seek to promote over-all economy and best uses for the purposes intended and encourage competition in satisfying the District's needs, and not be unduly restrictive.
- c. The requirements of this subsection 8701 regarding the purposes and non-restrictiveness of specifications shall apply to all specifications including, but not limited to, those prepared for the District by architects, engineers, designers, and draftsmen.

§ 8701.02 Conflicts Generally Prohibited

Except as specifically provided in this Subsection 8701.02, persons with a conflict of interest, or who anticipate responding to the proposal for which the specifications are written, may not participate in writing specifications. A person may be retained to assist in writing specifications, scopes of work, requirements, qualifications, or other components of a solicitation. A person assisting in writing specifications shall 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 provided, however, that this restriction shall not apply to a design build construction project or other procurements as determined in writing by the Procurement Officer.

- a. A non-employee of the District (such as a consulting engineer) who has prepared specifications for use by the District may participate in a District procurement using those specifications only if the person declares, in a writing delivered to the Procurement Officer or his designee, an intent to do so and the Procurement Officer or his designee makes a written determination, which is placed in the bid or contract file, indicating that it is in the best interest of the District to allow the identified non-employee to participate

in the procurement, including an identification of specific benefits that are expected to be received by the District and a determination that participation by the non-employee will not be prejudicial to the fair and equal conduct of the procurement process.

b. Violations may result in:

- i. The bidder or offeror being declared ineligible to be awarded the contract;
- ii. The solicitation being canceled;
- iii. Termination of an awarded contract; or
- iv. Any other action determined to be appropriate by the Board.

§ 8701.03 Brand Name or Equal Specifications

a. Brand name or equal specifications may be used when:

- i. An "or equivalent" reference as determined by the District is included in the specification; and,
- ii. As many other brand names as practicable are also included in the specification.

b. Brand name or equal specifications should include a description of the particular design and functional or performance characteristics which are required. Specifications unique to the brands shall be described in sufficient detail to enable a vendor to respond with an equivalent product.

c. When a manufacturer's specification is used in a solicitation, the solicitation will state the minimum acceptable requirements of an equivalent. When practicable, the District will name at least two manufacturer's specifications.

§ 8701.04 Brand Name Sole Source Requirements

a. If only one brand can meet the requirement, the District will conduct the procurement in accordance with Section 63G-6a-802 of the Act and solicit from as many providers of the brand as is practicable; and

b. If there is only one provider that can meet the requirement, the District will conduct the procurement in accordance with Section 63G-6a-802.

§ 8800 COMPETITIVE PROCUREMENT

§ 8801 Request for Information

Before issuing an invitation for bids or a request for proposals, the District may issue a request for information to determine whether to issue an invitation for bids or request for proposals and generate interest in a potential procurement by the District as provided in Sections 63G-6a-501 through -505 of the Act.

§ 8801.01 Use

A request for information may not be used to make a purchase or enter into a contract, but may be used to seek a wide range of information including:

- a. The availability of a procurement item;
- b. Delivery schedule;
- c. Industry standards and practices;
- d. Product specification;
- e. Training;
- f. New Technology;
- g. Capabilities of potential providers of a procurement item; and
- h. Alternate solutions.

§ 8801.02 Confidentiality

A request for information should contain instruction for claiming business confidentiality as follows: “In accordance with State Law, responses to RFIs are a public record and are subject to public review upon request. However, you may request any part of your RFI response be a protected record and not available for public release by complying with Utah Code Section 63G-2-309(1). To do this, you must provide the Owner with a written claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality. All responses to RFIs will become and remain the property of the owner.”

- a. **This is** If an RFI response contains information claimed to be business confidential or protected information, the offeror must submit two separate RFI responses as follows:
 - i. One redacted version for public release, with all protected business confidential information either blacked-out or removed, clearly marked as "Redacted Version"; and
 - ii. One non-redacted version for evaluation purposes clearly marked as "Protected Business Confidential.
- b. Pricing may not be classified as business confidential and will be considered to be public information.
- c. An entire proposal may NOT be designated as "PROTECTED", "CONFIDENTIAL" or "PROPRIETARY" and shall be considered to be non-responsive unless the offeror removes the designation.

§ 8802 Competitive Bids and Proposals - Over \$75,000

Except as otherwise allowed by law and this Policy, contracts for services, supplies, materials, or equipment where the amount to be paid annually by the District is more than **\$75,000** shall be awarded only after competitive sealed bids or proposals have been requested and received. Sealed written bids or proposals are to be obtained for all such purchases in excess of **\$75,000** from at least three suppliers (provided that there are at least three available suppliers willing to submit a bid or proposal). Documentation regarding the sealed written bids or proposals is to be maintained by the District and the purchase is to be documented as required by the District's applicable rules and regulations.

§ 8803 Bidding Procedure

Competitive Sealed Bidding shall be conducted in accordance with the requirements set forth in Sections 63G-6a-601 through 63G-6a-612 of the Act and as provided in this Policy.

§ 8803.01 Invitation for Bids

Except as otherwise provided in this Policy, contracts will generally be awarded by competitive sealed bidding. An invitation for bids will be issued when a contract is to be awarded by competitive sealed bidding.

a. The invitation for bids shall include the information required by Section 63G-6a-603 of the Act and may include a "Bid Form" or forms which provide lines for bidder information such as the following:

- i. The bidder's bid price;
- ii. The bidder's acknowledged receipt of addenda issued by the District;
- iii. Identification by the bidder of other applicable submissions; and
- iv. The bidder's signature

b. Bidders may be required to submit descriptive literature and/or product samples to assist in the evaluation of whether a procurement item meets the specifications and other requirements set forth in the invitation for bids.

- i. Product samples must be furnished free of charge unless otherwise stated in the invitation for bids and, if not destroyed by testing, will upon written request within any deadline stated in the invitation for bids be returned at the bidder's expense. Samples must be labeled or otherwise identified as specified in the invitation for bids.

c. Bid, payment and performance bonds or other security may be required for procurement items as set forth in the invitation for bids. Bid, payment and performance bond amounts shall be as prescribed by applicable law or be based upon the estimated level of risk associated with the procurement item and may not be increased above the estimated level of risk with the intent to reduce the number of qualified bidders.

d. Bids must be based upon a definite calculated price

- i. "Indefinite quantity contract" means a fixed price contract for an indefinite amount of procurement items to be supplied as ordered by the District and does not require a minimum purchase amount, or provide a maximum purchase limit;
- ii. "Definite quantity contract" means a fixed price contract that provides for the supply of a specified amount of goods over a specified period, with deliveries scheduled according to a specified schedule; and
- iii. Bids may not be based on using or referencing another bidder's price, including a percentage discount, a formula, any other amount related to another bidder's price, or conditions related to another bid.

§ 8803.02 Addenda to Invitation for Bids

Prior to the submission of bids, The District may issue addenda which may modify any aspect of the invitation for bids.

- a. Addenda will be distributed within a reasonable time to allow prospective bidders to consider the addenda in preparing bids.
- b. After the due date and time for submitting bids, at the discretion of the Procurement Officer, addenda to the invitation for bids may be limited to bidders that have submitted bids, provided the addenda do not make a substantial change to the invitation for bids that, in the opinion of the Procurement Officer, likely would have impacted the number of bidders responding to the invitation for bids.

§ 8803.03 Pre-Bid Conferences/Site Visits

- a. Pre-bid conferences and/or site visits may be conducted to explain the procurement requirements. If there is to be a pre-bid conference or a site visit, the time and place of the pre-bid conference/site visit should be stated in the invitation for bids.
- b. A pre-bid conference or a site visit may be mandatory, but only if the invitation for bids states that the conference/site visit is mandatory and provides the location, date and time of the conference/site visit and also states that failure to attend a mandatory conference/site visit shall result in the disqualification of any bidder that does not attend.
- c. Attendance in person is required at a pre-bid conference unless otherwise stated or requested by the Procurement Officer or designee.
- d. A site visit may generally only be attended in person provided, however, at the discretion of the Procurement Officer, an audio or video recording of a site visit may be used.
- e. Attendance and participation at all pre-bid conferences and site visits must be by an authorized representative of the vendor submitting a bid and as may be further specified in the invitation for bids.

f. The District will maintain an attendance log including the name of each attendee, the firm the attendee is representing, the attendee's contact information, and any documents distributed to the attendees; and the District may maintain minutes of the pre-bid conference/site visit.

g. The District may, as appropriate, publish as an addendum to the solicitation:

- i. The attendance log;
- ii. Minutes of the pre-bid conference and any documents distributed to the attendees at the pre-bid conference or site visit; or
- iii. Any oral modification made to any of the solicitation documents, which shall be reduced to writing.

§ 8803.04 Public Notice

Public notice of the invitation for bids is to be given a reasonable time prior to the date set forth therein for the opening of bids, in accordance with this section 8803. The notice may include publication in a newspaper of general circulation a reasonable time prior to the bid opening.

§ 8803.05 Bids and Modifications to a Bid Received After the Due Date and Time

a. Bids and modifications to a bid submitted electronically or by physical delivery, after the established due date and time, will not be accepted for any reason, except as determined under d. below.

b. When submitting a bid or modification electronically, bidders must allow sufficient time to complete the online forms and upload documents. The solicitation will end at the closing time posted in the electronic system, if applicable. If a bidder is in the process of uploading a bid when the closing time arrives, the bid or modification of the bid will not be accepted.

c. When submitting a bid or modification to a bid by physical delivery (U.S. mail, courier service, hand-delivery, or other physical means) bidders are solely responsible for meeting the deadline. Delays caused by a delivery service or other physical means will not be considered as an acceptable reason for a bid or modification to a bid being late. All bids or modifications to bids received by physical delivery will be date and time stamped.

d. To the extent that an error on the part of the District or an employee of the District results in a bid or modification to a bid not being received by the established due date and time, the bid or modification to a bid will be accepted as being on time.

§ 8803.06 Opening and Recording of Bids

Bids will be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and any other relevant information specified by this section 8803, together with the name of each bidder, shall be recorded. A bid summary shall be open to the public after award of the bid; however, each bid document shall only be available upon request once the contract has been awarded and signed.

§ 8803.07 Errors in Bids

The following shall apply to the correction or withdrawal of an inadvertently erroneous bid, or the cancellation of an award or contract that is based on an unintentionally erroneous bid. A decision to permit the correction or withdrawal of a bid or the cancellation of any award or contract shall be supported in a written document signed by the Procurement Officer.

- a. Errors attributed to a bidder's error in judgment may not be corrected.
- b. Provided that there is no change in bid pricing or the cost evaluation formula, errors not attributed to a bidder's error in judgment may be corrected if it is in the best interest of the District and correcting the mistake maintains the fair treatment of other bidders. Examples include:
 - i. Missing signatures,
 - ii. Missing acknowledgment of receipt of an addendum;
 - iii. Missing copies of professional licenses, bonds, or insurance certificates, provided that copies are submitted by the deadline to correct this mistake established by the Procurement Officer;
 - iv. Typographical errors;
 - v. Mathematical errors not affecting the total bid price; or
 - vi. Other errors deemed by the Procurement Officer to be immaterial or inconsequential in nature.
- c. The Procurement Officer shall approve or deny, in writing, a bidder's request to correct or withdraw a bid.
- d. Corrections or withdrawal of bids shall be conducted in accordance with Section 63G-6a-605 of the Act.

§ 8803.08 Errors Discovered After the Award of Contract

- a. Errors discovered after the award of a contract may only be corrected if, after consultation with the Procurement Officer and the District's legal counsel, it is determined that the correction of the mistake does not violate the requirements of the Procurement Code or this Policy.
- b. Any such correction must be supported by a written determination signed by the Procurement Officer.

§ 8803.09 Re-solicitation of a Bid

- a. Re-solicitation of a bid may occur if the Procurement Officer determines that:
 - i. A material change in the scope of work or specifications has occurred;
 - ii. Procedures outlined in the Procurement Code were not followed;
 - iii. Additional public notice is desired;
 - iv. There was a lack of adequate competition; or
 - v. Any other reason exists that causes re-solicitation to be in the best interest of the District.

- b. Re-solicitation may not be used to avoid awarding a contract to a qualified vendor in an attempt to steer the award of a contract to a favored vendor.

§ 8803.10 Bid Award

Unless the District elects to cancel the procurement or re-solicit bids, contracts are to be awarded with reasonable promptness by written notice to the lowest responsive and responsible bidder whose bid meets the requirements and objective criteria described in the invitation for bids.

- a. Bids shall be based on the lowest bid for the entire term of the contract, excluding renewal periods and, unless an exception is authorized in writing by the Procurement Officer, cost may not be divided or evaluated on any other basis than the entire term of the contract, excluding renewal periods.

- b. In the event all bids for a construction project exceed available funds as certified by the appropriate fiscal officer, and the low responsive and responsible bid does not exceed such funds by more than 5%, the Procurement Officer or Board is authorized, in situations where time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate an adjustment of the scope or bid price, including changes in the bid requirements, with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds.

§ 8803.11 Only One Bid Received

If only one responsive and responsible bid is received in response to an invitation for bids, including multiple stage bidding, an award may be made to the single bidder if the Procurement Officer determines that the price submitted is fair and reasonable and other prospective bidders had a reasonable opportunity to respond, or there is not adequate time for re-solicitation. Otherwise, the bid may be rejected and:

- a. A new invitation for bids solicited;

- b. The procurement canceled; or

c. The procurement may be conducted as a sole source under Section 63G-6a-802 of the Act.

§ 8803.12 Multiple or Alternate Bids

a. Multiple or alternate bids will not be accepted, unless otherwise specifically required or allowed in the invitation for bids.

b. If a bidder submits multiple or alternate bids that are not requested in the invitation for bids, the Procurement Officer will only accept the bidder's primary bid and will not accept any other bids constituting multiple or alternate bids.

§ 8803.13 Methods to Resolve Tie Bids

a. In accordance with Section 63G-6a-608 of the Act, in the event of tie bids, the contract shall be awarded to the bidder that qualifies as a Utah resident bidder, provided the bidder indicated on the invitation to bid form that it is a Utah resident bidder.

b. If a Utah resident bidder is not identified, the preferred method for resolving tie bids shall be for the Procurement Officer to toss a coin in the presence of a minimum of three witnesses, with the firm first in alphabetical order being heads.

c. Other methods to resolve a tie bid described in Section 63G-6a-608 of the Act may be used as deemed appropriate by the Procurement Officer.

§ 8803.14 Notice of Award

The District shall, on the day on which the award of a contract is announced, make available to each bidder and to the public a notice that includes:

a. The name of the bidder to which the contract is awarded and the price(s) of the procurement item(s); and

b. The names and the prices of each bidder to which the contract is not awarded.

§ 8803.15 Multiple Stage Bidding Process

Multiple stage bidding shall be conducted in accordance with the requirements set forth in Section 63G-6a-609 of the Procurement Code. The Procurement Officer may hold a pre-bid conference as described in Subsection 8803.03 above to discuss the multiple stage bidding process or for any other permissible purpose.

§ 8804 Unpriced Offers

When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued under section 8803 above requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

§ 8805 Competitive Sealed Proposals

Whenever the Procurement Officer or other designated employee of the District determines that the use of competitive sealed bidding is either not practicable or not advantageous to the District, a contract may be entered into using competitive sealed proposals. A request for proposals (“RFP”) shall be conducted in accordance with the requirements set forth in Sections 63G-6a-701 through 63G-6a-711 of the Procurement Code and as provided below.

§ 8805.01 Content of the Request for Proposals

a. In addition to the requirements set forth under Section 63G-6a-703 of the Act, the request for proposals solicitation shall include:

- i. A description of the format that offerors are to use when submitting a proposal, including any required forms; and
- ii. Instructions for submitting price.

b. The District is responsible for all content contained in the request for proposals solicitation documents, including:

- i. Reviewing all schedules, dates, and timeframes;
- ii. Approving content of attachments;
- iii. Assuring that information contained in the solicitation documents is public information; and
- iv. Understanding the scope of work and all evaluation criteria, requirements, factors, and formulas to be used in determining the scoring of proposals.

§ 8805.02 Multiple Stage RFP Process:

In addition to the requirements set forth under Section 63G-6a-710 of the Act, a multiple stage request for proposals solicitation shall include:

- a. A description of the stages and the criteria and scoring that will be used to evaluate proposals at each stage; and
- b. The methodology used to determine which proposals shall be disqualified from additional stages.

§ 8805.03 Exceptions to Terms and Conditions Published in the RFP

- a. Offerors requesting exceptions and/or additions to the standard terms and conditions published in the RFP must include the exceptions and/or additions with the proposal response.
- b. Exceptions and/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 and/or additions have been approved by the District's legal counsel, and it is determined by the Procurement Officer that it is not beneficial to the District to republish the solicitation.
- c. Offerors may not submit requests for exceptions and/or additions by reference to a vendor's website or URL.
- d. The District may refuse to negotiate exceptions and/or additions:
 - i. That are determined to be excessive;
 - ii. That are inconsistent with similar contracts of the District;
 - iii. To warranties, insurance or indemnification provisions that are deemed, after consultation with the District's attorney, to be necessary to protect the District;
 - iv. Where the solicitation specifically prohibits exceptions and/or additions; or
 - v. That are not in the best interest of the District.
- e. If negotiations are permitted, the District may negotiate exceptions and/or additions with offerors, beginning in order with the offeror submitting the fewest exceptions and/or additions to the offeror submitting the greatest number of exceptions and/or additions. Contracts may become effective as negotiations are completed.
- f. If, in the negotiation of exceptions and/or additions with a particular offeror, an agreement is not reached, after a reasonable amount of time, as determined by the Procurement Officer, the negotiations may be terminated, a contract will not be awarded to that offeror, and the District may move to the next eligible offeror.

§ 8805.04 Protected Records

- a. Requests for Proposals should contain instruction for claiming business confidentiality as follows: "In accordance with State Law, proposals are a public record and are subject to public review upon request. However, you may request any part of your proposal be a protected record and not available for public release by complying with Utah Code Section 63G-2-309(1). To do this, you must provide the Owner with a written claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality. All proposals will become and remain the property of the owner."
- b. If an offeror submits a proposal that contains information claimed to be business confidential or protected information, the offeror must submit two separate proposals as follows:

- i. One redacted version for public release, with all protected business confidential information either blacked-out or removed, clearly marked as "Redacted Version"; and
 - ii. One non-redacted version for evaluation purposes clearly marked as "Protected Business Confidential."
- c. Pricing may not be classified as business confidential and will be considered to be public information.
- d. An entire proposal may NOT be designated as "PROTECTED", "CONFIDENTIAL" or "PROPRIETARY" and shall be considered to be non-responsive unless the offeror removes the designation.

§ 8805.05 Notification

- a. In accordance with Utah Code 63G-2-309(1)(b), A person who complies with Subsection 8805.04 immediately above will be notified by the District prior to the public release of any information for which a claim of confidentiality has been asserted.
- b. If an appeal over the release of information is made, the procedures described in Utah Code 63G-2-309(2) will be followed.
- c. A summary of the proposals shall be open to the public after award of the successful proposals in compliance with Section 63G-6a-709.5 of the Act; however, each proposal document shall only be available upon request once the contract has been awarded and signed.

§ 8805.06 Pre-proposal Conferences/Site Visits

- a. Pre-proposal conferences/site visits may be conducted to explain the procurement requirements. If there is to be a pre-proposal conference or site visit, the time and place of the pre-proposal conference/site visit shall be stated in the RFP.
- b. Pre-proposal conference/site visits may be mandatory, but only if the RFP states that the pre-proposal conference/site visit is mandatory and provides the location, date and time of the site visit and also states that failure to attend a mandatory pre-proposal conference/site visit shall result in the disqualification of any offeror that does not attend.
- c. Attendance at a pre-proposal conference in person is required unless otherwise stated or requested by the Procurement Officer or designee.
- d. A site visit may generally only be attended in person.

e. Attendance and participation at all pre-proposal conferences and site visits must be by an authorized representative of the vendor submitting a proposal and as may be further specified in the RFP.

f. The District will maintain an attendance log including the name of each attendee, the firm the attendee is representing, the attendee's contact information, and any documents distributed to the attendees; and the District may maintain minutes of the pre-proposal conference/site visit.

g. The District may, as appropriate, publish as an addendum to the solicitation:

- i. The attendance log;
- ii. Minutes of the pre-proposal conference and any documents distributed to the attendees at the pre-proposal conference or site visit; or
- iii. Any oral modification made to any of the solicitation documents, which shall be reduced to writing.

§ 8805.07 Addenda to Request for Proposals

a. Addenda to a Request for Proposals may be made for the purpose of making changes to:

- i. The scope of work;
- ii. The schedule;
- iii. The qualification requirements;
- iv. The criteria;
- v. The weighting; or
- vi. Other requirements of the RFP.

b. Addenda shall be published within a reasonable time prior to the deadline that proposals are due, to allow prospective offerors to consider the addenda in preparing proposals. Publication at least 2 or as otherwise stated calendar days prior to the deadline that proposals are due shall be deemed a reasonable time. Minor addenda and urgent circumstances may justify a shorter period of time.

c. After the due date and time for submitting a response to a request for proposals, at the discretion of the Procurement Officer, addenda to the request for proposals may be limited to offerors that have submitted proposals, provided the addenda does not make a substantial change to the RFP that, in the opinion of the Procurement Officer, likely would have impacted the number of offerors responding to the original publication of the RFP.

§ 8805.08 Modification or Withdrawal of Proposal Prior to Deadline

A proposal may be modified or withdrawn prior to the established due date and time for responding.

§ 8805.09 Proposals and Modifications, Delivery and Time Requirements

To the extent that an error on the part of the District or an employee of the District results in a proposal or modification to a proposal not being received by the established due date and time, the proposal or modification to a proposal shall be accepted as being on time.

Otherwise, the following shall apply:

- a. Proposals and modifications to a proposal submitted electronically or by physical delivery, after the established due date and time, will not be accepted for any reason, except as determined under d. below.
- b. When submitting a proposal or modification to a proposal electronically, offerors must allow sufficient time to complete the online forms and upload documents. The solicitation will end at the closing time posted in the electronic system. If an offeror is in the process of uploading a proposal when the closing time arrives, the proposal or modification to a proposal will not be accepted.
- c. When submitting a proposal or modification to a proposal by physical delivery (U.S. mail, courier service, hand-delivery, or other physical means) offerors are solely responsible for meeting the deadline. Delays caused by a delivery service or other physical means will not be considered as an acceptable reason for a proposal or modification to a proposal being late. All proposals or modifications to proposals received by physical delivery will be date and time stamped by the District.
- d. To the extent that an error on the part of the District or an employee of the District results in a proposal or modification to a proposal not being received by the established due date and time, the proposal or modification to a proposal will be accepted as being on time.

§ 8805.10 Errors in Proposals

The following shall apply to the correction or withdrawal of an unintentionally erroneous proposal, or the cancellation of an award or contract that is based on an unintentionally erroneous proposal. A decision to permit the correction or withdrawal of a proposal or the cancellation of an award or a contract shall be supported in a written document, signed by the Procurement Officer.

- a. Mistakes attributed to an offeror's error in judgment may not be corrected.
- b. Unintentional errors not attributed to an offeror's error in judgment may be corrected if it is in the best interest of the District and correcting the error maintains the fair treatment of other offerors. Examples include:
 - i. Missing signatures,
 - ii. Missing acknowledgement of an addendum;

- iii. Missing copies of professional licenses, bonds and insurance certificates, provided that copies are submitted by the deadline to correct the mistake established by the Procurement Officer;
 - iv. Typographical errors;
 - v. Mathematical errors not affecting the total proposed price; or
 - vi. Other errors deemed by the Procurement Officer to be immaterial or inconsequential in nature.
- c. Unintentional errors discovered after the award of a contract may only be corrected if, after consultation with the Procurement Officer and the District's legal counsel, it is determined that the correction of the error does not violate the requirements of the Procurement Code or this Policy.

§ 8805.11 Evaluation of Proposals

- a. The evaluation of proposals shall be conducted in accordance with Part 7 of the Procurement Code.
- b. An evaluation committee may ask questions of offerors to clarify proposals, provided that the questions are submitted and answered in writing. The record of questions and answers shall be maintained in the file.
- c. The evaluation of cost in an RFP shall be based on the entire term of the contract, excluding renewal periods.
 - i. Unless an exception is authorized in writing by the Procurement Officer, cost should not be artificially divided or evaluated on any other basis than the entire term of the contract, excluding renewal periods.
 - ii. Whenever practicable, the evaluation of cost should include maintenance and service agreements, system upgrades, apparatuses, and other components associated with the procurement item.

§ 8805.12 Correction or Withdrawal of Proposal

- a. In the event an offeror submits a proposal that on its face appears to be impractical, unrealistic or otherwise in error, the Procurement Officer or his designee may contact the offeror to either confirm the proposal, permit a correction of the proposal, or permit the withdrawal of the proposal, in accordance with Section 63G-6a-706 of the Act.
- b. Offerors may not correct errors, deficiencies, or incomplete responses in a proposal that has been determined to be not responsible or not responsive, or that does not meet the mandatory minimum requirements stated in the request for proposals in accordance with Section 63G-6a-704 of the Act.

§ 8805.13 Interviews and Presentations

- a. Interviews and presentations may be held as outlined in the RFP.
- b. Offerors invited to interviews or presentations shall be limited to those offerors meeting minimum requirements specified in the RFP.
- c. Representations made by the offeror during interviews or presentations shall become an addendum to the offeror's proposal and shall be documented. Representations must be consistent with the offeror's original proposal and may only be used for purposes of clarifying or filling in gaps in the offeror's proposal.
- d. The Procurement Officer shall establish a date and time for the interviews or presentations and shall notify eligible offerors of the procedures. Interviews and presentations will be at the offeror's expense.

§ 8805.14 Best and Final Offers

Best and final offers (BAFO) shall be conducted in accordance with Section 63G-6a-707.5 of the Act and this Policy.

- a. The BAFO process is an optional step in the evaluation phase of the request for proposals process in which offerors are requested or given an opportunity to modify their proposals. An evaluation committee may request best and final offers when:
 - i. No single proposal addresses all of the specifications;
 - ii. All or a significant number of the proposals are unclear;
 - iii. Additional information is needed for the evaluation committee to make a decision;
 - iv. Differences between proposals in one or more categories are too close to distinguish;
 - v. Proposals are unclear and the evaluation committee requires further clarification;
 - or
 - vi. All cost proposals are too high or are over the budget.
- b. Only offerors meeting the minimum qualifications or scores described in the RFP are eligible to respond to a call for best and final offers.
- c. Proposal modifications submitted in response to a request for best and final offers may only address the specific issues and/or sections of the RFP described in the request for best and final offers. An offeror may not use the best and final offers process to correct other deficiencies in the offeror's proposal not called for in the request for best and final offers issued by the District.
- d. When a request for best and final offers is issued to reduce cost proposals, offerors shall submit itemized cost proposals which clearly indicate the tasks or scope reductions that can be implemented to bring costs within the available budget.

- i. The cost information of one offeror may not be disclosed to a competing offeror during the best and final offers process and such cost information shall not be shared with other offerors until after the contract has been awarded.
 - ii. The District shall ensure that auction tactics are not used in the discussion process, including discussing and comparing the costs and features of other proposals.
- e. The best and final offers process may only be conducted during the evaluation phase of the RFP process and may not be conducted as part of the contract negotiation process.
- f. The District may not use the best and final offers process to allow offerors a second opportunity to propose on the entire RFP.
- g. If a proposal modification is made orally during the interview or presentation process, the modification must be confirmed in writing.
- h. A request for best and final offers shall:
 - i. Comply with all public notice requirements provided in Section 63G-6a-406 of the Act;
 - ii. Include a deadline for submission that allows offerors a reasonable opportunity to prepare and submit their responses;
 - iii. Indicate how proposal modifications in response to a request for best and final offers will be evaluated;
- i. If an offeror does not submit a best and final offer, its immediate previous proposal will be considered as its best and final offer;
- j. Unsolicited best and final offers will not be accepted.

§ 8805.15 Cost-benefit Analysis Exception: CM/GC

- a. A cost-benefit analysis is not required if the contract is awarded based solely on the qualifications of the construction manager/general contractor and the management fee described in Section 63G-6a-708 of the Act, provided:
 - i. A competitive process is maintained by the issuance of a request for proposals that requires the offeror to provide, at a minimum:
 - (1) A management plan;
 - (2) References;
 - (3) Statements of qualifications; and
 - (4) A management fee which contains only the following:
 - ii. Preconstruction phase services;
 - iii. Monthly supervision fees for the construction phase; and

- iv. Overhead and profit for the construction phase.
- b. A cost-benefit analysis conducted under Section 63G-6a-708 of the Act shall be based on the entire term of the contract, excluding any renewal periods.
- c. The evaluation committee may, as described in the solicitation, weight and score the management fee as a fixed rate or a fixed percentage of the estimated contract value.
- d. The awarded contract must be in the best interest of the District.

§ 8805.16 Only One Proposal Received

- a. If only one proposal is received in response to a request for proposals, the evaluation committee may conduct a review to determine if:
 - i. The proposal meets the minimum requirements;
 - ii. Pricing and terms are reasonable; and
 - iii. The proposal is in the best interest of the District.
- b. If the evaluation committee determines that the proposal meets the minimum requirements, pricing and terms are reasonable, and the proposal is in the best interest of the District, the District may make an award.
- c. If an award is not made, the District may either cancel the procurement or resolicit for the purpose of obtaining additional proposals.

§ 8805.17 Evaluation Committee Procedures for Scoring Criteria Other Than Cost

- a. In order to prevent the evaluation committee from analyzing proposals that cannot be considered for award, the Procurement Officer or designee shall, prior to distributing copies of proposals to the evaluation committee, review all proposals for responsibility, responsiveness or any violation of the Procurement Code or this Policy. The evaluation committee may not evaluate proposals deemed non-responsive, non-responsible or disqualified for violations of the Utah Procurement Code or this Policy.
- b. The evaluation and scoring of proposals in the RFP process shall be conducted in accordance with the following procedures:
 - i. Prior to the scoring of proposals, the Procurement Officer or his designee will meet with the evaluation committee and any staff members who will have access to the proposals to:
 - (1) Discuss the evaluation and scoring process to ensure that each committee member has a clear understanding of the scoring process and how points will be assigned;

- (2) Discuss requirements regarding conflicts of interest, the appearance of impropriety, and the importance of confidentiality;
- (3) Discuss the scoring sheet and evaluation criteria set forth in the RFP; and
- (4) Provide a copy of relevant portions of this Policy to the evaluation committee and any staff members who will have access to the proposals.

- ii. Once the proposals have been received and it is clear which offerors will be involved in the RFP process, each member of the evaluation committee may be asked to sign a written statement certifying that he/she does not have a conflict of interest, as set forth in Section 63G-6a-707 of the Act and in this Policy.
- c. Unless an exception is authorized by the Procurement Officer, in order to avoid cost influencing the evaluation committee's scoring of non-price criteria, in accordance with Section 63G-6a-707 of the Act, costs may not be revealed to the evaluation committee until after the committee has finalized its scoring on all other technical non-price criteria stated in the RFP.
- d. After receipt of proposals, each committee member shall independently read and score each proposal based on the technical non-price criteria set forth in the RFP to assess the completeness, quality, and desirability of each proposal.
 - i. Proposals must be evaluated solely on the criteria stated in the RFP.
 - (1) Past performance ratings and references may be considered if listed as evaluation criteria in the RFP.
 - (2) Personal opinions based on prior experience with a procurement item or the offeror are not to be considered in scoring proposals, except as provided in the RFP.
 - (3) Personal favoritism for a vendor or bias against a vendor cannot be considered in scoring proposals.
 - ii. Evaluators are encouraged to request technical support from the Procurement Officer or his designee when conducting their independent assessments and scoring.
 - iii. After the proposals have been evaluated and scored by the individual committee members, the entire committee shall meet to discuss the proposals; if applicable, to conduct interviews; to resolve any factual disagreements; and to arrive at the final scoring. All committee members must be present in person or by electronic means to take any official action. If a committee member does not attend an evaluation committee meeting (including electronic attendance), the member may be removed from the evaluation committee and the remainder of the committee may take official action, provided there are at least three evaluation committee members remaining.
 - iv. If there are mandatory minimum requirements, those offerors not meeting the requirements will be eliminated from further consideration.
 - v. During committee discussions, each member may change his/her initial scoring. If additional information or clarification is needed from an offeror, the committee may, with approval by the Procurement Officer, request information or clarification from

an offeror. Such request will only be approved if it can be done in a manner that is fair to all offerors.

vi. At any time during the evaluation process, the evaluation committee may, with the approval of the Procurement Officer, request best and final offers from responsible and responsive offerors and evaluate those offers in accordance with Section 63G-6a-708 of the Act and applicable portions of this Policy.

vii. Each evaluation committee member shall turn in a completed scoring sheet, signed and dated by the evaluation committee member.

e. The evaluation committee may tally the final scores for criteria other than cost to arrive at a consensus score by either of the following methods:

- i. Total of all of the points given by individual committee members; or
- ii. An average of the individual scores.

f. The evaluation committee shall submit its final recommended scores for all criteria other than cost to the Procurement Officer.

g. The District shall follow the procedures set forth in Section 63G-6a-707(5) of the Act pertaining to the following:

- i. Reviewing the evaluation committee's final recommended scores for each proposal for all criteria other than cost;
- ii. Scoring cost based on the applicable scoring formula; and
- iii. Calculating the total combined score for each responsive and responsible proposal.

h. The evaluation committee and/or the Procurement Officer shall prepare the cost justification statement and any applicable cost-benefit analysis in accordance with Section 63G-6a-708 of the Act.

i. The District may replace any member on the evaluation committee or reconstitute the committee in any way the District deems appropriate to cure an impropriety. If the impropriety cannot be cured by replacing a committee member, then a new evaluation committee will be selected.

j. Nothing in this Policy shall preclude the Procurement Officer from serving on an evaluation committee.

§ 8805.18 Criteria for Scoring Criteria Other Than Cost

a. Scoring of evaluation criteria other than cost, for proposals meeting the mandatory minimum requirements stated in an RFP, shall be based on the criteria stated in the RFP.

§ 8805.19 Minimum Score Thresholds

The District may establish minimum score thresholds for any RFP procurement to advance proposals from one stage in the RFP process to the next, including contract award.

- a. If minimum score thresholds are established for a procurement, the RFP must clearly describe the minimum score threshold that proposals must achieve in order to advance to the next stage in the RFP process or to be awarded a contract.
- b. Minimum score thresholds may be based on:
 - i. Minimum scores for each evaluation category;
 - ii. The total of each minimum score in each evaluation category; or
 - iii. A combination of (i) and (ii).

§8805.20 Evaluation Committee Members Required to Exercise Independent Judgment

- a. Evaluators are expected to exercise independent judgment in a manner that is not dependent on anyone else's opinion or desires.
- b. Evaluators may seek to increase their knowledge before scoring by asking questions and seeking appropriate information from the Procurement Officer. Otherwise, evaluators should not discuss proposals or the scoring of proposals with other persons who are not on the evaluation committee.
- c. The exercise of independent judgment applies not only to possible influences from outside the evaluation committee, but also to 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 be allowed to lead to coercion or intimidation on the part of one committee member in an attempt to influence the scoring of another committee member. Evaluators may not act on their own or in concert with another evaluation committee member to steer an award to a favored vendor or to disfavor a particular vendor.
- d. Evaluators are required to report to the Procurement Officer any attempt by another committee member to improperly influence the scoring to favor or disfavor a particular offeror.
- e. If an evaluator feels that his/her independence has been compromised, that person must recuse himself/herself from the evaluation process.

§ 8805.21 Publicizing Awards

- a. In addition to the requirements of Section 63G-6a-709.5 of the Act, the following shall be disclosed after receipt of a GRAMA request and payment of any lawfully enacted and applicable fees:

- i. The contract(s) entered into as a result of the selection and the successful proposal(s), except for those portions that are to be non-disclosed under Subsection 8805.04 above;
 - ii. The unsuccessful proposals, except for those portions that are not to be disclosed;
 - iii. The rankings of the proposals;
 - iv. The final scores used by the evaluation committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores or rankings.
 - v. The written justification statement supporting the selection, except for those portions that are not to be disclosed.
- b. The following may impair the District’s procurement proceedings or give an unfair advantage to a person proposing to enter into a contract or agreement with the District, and may not be disclosed by the District to the public, including under a GRAMA request:
- i. The names of individual scorers/evaluators in relation to their individual scores or rankings;
 - ii. Any individual scorer's/evaluator's notes, drafts, or working documents;
 - iii. Non-public financial statements; and
 - iv. Past performance and reference information, which is not provided by the offeror and which is obtained as a result of the efforts of the District. To the extent such past performance or reference information is included in the written justification statement; it is subject to public disclosure.

§ 8806 Annual Renewals of Purchase Contracts

Unless the District has an approved contract with a longer term than one year or it is desirable to extend or continue purchases from the same source as allowed under Subsection 89101.01, 89101.02 or 89101.03, the purchase of supplies, materials and equipment on a monthly or other recurring basis is to be the subject of an annual bid, proposal or competitive quotation procedure, as determined to be appropriate by the Procurement Officer.

§ 8807 Conformity to Solicitation Requirements

§ 8807.01 Rejection

- a. Any bid or offer that fails to conform to the essential requirements of the solicitation shall be rejected.
- b. Any bid or offer that does not conform to the applicable specifications shall be rejected unless the solicitation authorized the submission of alternate bids or offers and the procurement item(s) offered as alternates meet the requirements specified in the solicitation.
- c. Any bid or offer that fails to conform to the delivery schedule or permissible alternates stated in the solicitation shall be rejected.

§ 8807.02 Conditions or Exceptions

A bid or offer 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 to the District, since to allow the bidder or offeror to impose such conditions or take exceptions would be prejudicial to other bidders or offerors. For example, bids or offers shall be rejected in which the bidder or offeror:

- a. For commodities, protects against future changes in conditions, such as increased costs, if total possible costs to the District cannot be determined;
- b. Fails to state a price and indicates that price will be the price in effect at time of delivery or states a price but qualifies it as being subject to the price in effect at the 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 the date of award, the bidder or offeror receives (or does not receive) an award under a separate solicitation;
- d. Requires that the District is to determine that the bidder's or offeror's product meets applicable specifications; or
- e. Limits any right of the District under any contract clause.

§ 8807.03 Deletion

A bidder or offeror may be requested to delete objectionable conditions from a bid or offer, provided doing so is not prejudicial to other bidders or offerors, or the conditions do not go to the substance, as distinguished from the form, of the bid or proposal. A condition goes to the substance of a bid or offer where it affects price, quantity, quality, or delivery of the offered procurement item(s).

§ 8808 Unreasonable or Unbalanced Pricing

§ 8808.01 Rejection

- a. Any bid or offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price. Unreasonableness of price includes not only the total price of the bid or offer, but also the prices for individual line items.
- b. Any bid or offer may be rejected if the prices for any line item or subline item are materially unbalanced. Unbalanced pricing may increase performance risk and could result in payment of unreasonably high prices. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more line items is significantly

overstated or understated as indicated by the application of cost or price analysis techniques. The greatest risks associated with unbalanced pricing occur when:

- i. Startup work, mobilization, procurement item sample production or testing are separate line items;
 - ii. Base quantities and optional quantities are separate line items; or
 - iii. The evaluated price is the aggregate of estimated quantities to be ordered under separate line items of an indefinite-delivery contract.
- c. All bids or offers with separately priced line items or subline items may be analyzed to determine if the prices are unbalanced. If cost or price analysis techniques indicate that an offer is unbalanced, the District shall:
- i. Consider the risks to the District associated with the unbalanced pricing in determining the competitive range and in making the source selection decision; and
 - ii. Consider whether award of the contract will result in paying unreasonably high prices for contract performance.
- d. A bid or offer may be rejected if the Procurement Officer determines that the lack of balance poses an unacceptable risk to the District.

§ 8809 Rejection for Nonresponsibility or Nonresponsiveness

§ 8809.01 Nonresponsible Bidder or Offeror

Subject to Section 63G-6a-903 of the Act, the Procurement Officer shall reject a bid or offer from a bidder or offeror that is determined to be nonresponsible. A responsible bidder or offeror is defined in Section 63G-6a-103 of the Act. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility of that bidder or offeror.

§ 8809.02 Nonresponsive Offer

In accordance with Section 63G-6a-604(3) of the Act, the Procurement Officer may not accept a bid or proposal that is not responsive. Responsiveness is defined in Section 63G-6a-103 of the Act.

§ 8809.03 Bid Security Failure

When 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.

§ 8809.04 Documentation

The originals of all rejected bids, offers, or other submissions, and all written findings with respect to such rejections, shall be made part of the procurement file and be available for public inspection.

§ 8810 Rejection for Suspension/Debarment

Bids, offers, or other submissions received from any vendor that is suspended, debarred, or otherwise ineligible as of the due date for receipt of bids, proposals, or other submissions shall be rejected.

§ 8900 CANCELLATION, REJECTION AND DEBARMENT

§ 8901 General Provisions

§ 8901.01 Cancellation

An Invitation for Bids, a Request for Proposals, or other solicitation may be canceled prior to the deadline for receipt of bids, proposals, or other submissions, when it is in the best interest of the District as determined by the Procurement Officer. 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 District shall:

- a. Re-solicit new bids or proposals using the same or revised specifications; or
- b. Withdraw the requisition for the procurement item(s).

§ 8901.02 Rejection of Bids and Proposals

Any or all bids or competitive sealed proposals may be rejected in whole or in part when doing so is deemed to be in the best interest of the District, and the District may, in its discretion, re-invite bids or re-solicit competitive sealed proposals.

After a notice of award has been issued, but before a written contract between the successful vendor and the District has been signed, the District may cancel the notice of award based upon information which, if it had been known prior to the issuance of the notice of award, would have been cause for the rejection of the otherwise successful bid or proposal.

§ 8901.03 Documentation

The reason(s) for cancellation or rejection shall be part of the contract file and be available for public inspection.

§ 8902 Re-solicitation

§ 8902.01 No Response

In the event there is no response to an initial solicitation, the Procurement Officer 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 obtained under (a) and (b), modify the solicitation documents.

§ 8902.02 Inadequate Supplemental Response

If the District 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 Officer may:

- a. Further modify the procurement documents; or,
- b. Cancel the requisition for the procurement item(s).

§ 8903 Cancellation Before Award

When it is determined before award but after opening that the specifications, scope of work or other requirements contained in the solicitation documents were not met by any bidder or offeror, the solicitation shall be cancelled.

§ 8903.01 Determination

Solicitations may be cancelled before award but after opening all bids or offers when the Procurement Officer determines in writing that:

- a. Inadequate or ambiguous specifications were cited in the solicitation;
- b. The specifications in the solicitation have been or must be revised;
- c. The procurement item(s) being solicited are no longer required;
- d. The solicitation did not provide for consideration of all factors of cost to the District, such as cost of transportation, warranties, service and maintenance;
- e. Bids or offers received indicate that the needs of the District might be satisfied by a less expensive procurement item differing from that in the solicitation;
- f. Except as provided in Section 63G-6a-607 of the Act, all otherwise acceptable bids or offers received are at unreasonable prices, or only one bid or offer is received and the

Procurement Officer cannot determine the reasonableness of the bid price or cost proposal;

g. The responses to the solicitation were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or

h. No responsive bid or offer has been received from a responsible bidder or offeror;

§ 8904 Alternative to Cancellation

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

§ 8905 Continuation of Need

If the solicitation has been cancelled for the reasons specified in Subsection 8903.01 f., g., or h. above, the Procurement Officer has made the determination required under Subsection 8903, and the District has an existing contract, the District may permit an extension of the existing contract under Section 63G-6a-802(7) of the Act.

§ 89100 EXCEPTIONS – PROCUREMENT WITHOUT COMPETITION

§ 89101 Contracts Awarded Without Competition

The Procurement Officer or the Board, through appropriate action, may determine that a specific contract for a supply, service or construction item should be awarded without receipt or review of competitive bids or proposals if one of the circumstances stated in 89101.01 through .06 below exists. In the event that a contract is awarded without competition for one of these reasons, a written determination of both the reason for purchasing or contracting without competition as well as the basis for the selection of the particular contractor and/or supplier will be recorded. With these written determinations, a record containing the contractor's or supplier's name, the amount and type of the contract, the total dollar value of the procurement item including, when applicable, the actual or estimated full life-cycle cost of maintenance and of the service agreement, the duration of the proposed sole source contract, documentation that there is no other competing source for the procurement item (unless the procurement is under 89101.01 b. or c. below), a description of the procurement item, and any other information desired by the Procurement Officer will be maintained in the contract file.

§ 89101.01 Sole Source

a. Sole source procurements shall be conducted in accordance with requirements set forth in Section 63G-6a-802 of the Procurement Code. A sole source procurement may be conducted if:

- i. There is only one source for the procurement item;
- ii. The award to a specific supplier, service provider, or contractor is a condition of a donation or grant that will fund the full cost of the supply, service or construction item; or
- iii. The procurement item is needed for trial use or testing pursuant to Section 63G-6a-802 of the Act to determine whether the procurement item will benefit the District.

b. Except as provided in (i) below, sole source procurements over **\$75,000** shall be published, and less costly sole source procurements may be published, in accordance with Section 63G-6a-406 of the Act. The requirement for publication of notice for a sole source procurement is waived:

- i. For public utility services;
- ii. If the award to a specific supplier, service provider, or contractor is a condition of a donation or grant that will fund the full cost of the supply, service, or construction item; or
- iii. For other circumstances as determined in writing by the Procurement Officer.

c. A person may contest a sole source procurement prior to the closing of the public notice period set forth in Section 63G-6a-406 of the Act by submitting the following information in writing to the Procurement Officer:

- i. The name of the contesting person; and
- ii. A detailed explanation of the challenge, including documentation showing that there are other competing sources for the procurement item.

d. Upon receipt of information contesting a sole source procurement, the Procurement Officer shall conduct an investigation to determine the validity of the challenge and make a written determination either supporting or denying the challenge.

§ 89101.02 Continuation of Previous Purchases

When the purchase is a continuation of previous purchases, and there exists a clear potential economic benefit to the District to negotiate a contract directly with the firm that supplied the initial purchase.

§ 89101.03 No Response to Bid Invitation

When the District does not receive a response to its announcement, request or invitation to bid.

§ 89101.04 Cooperative Contract

When the District makes purchases pursuant to a Participating Addendum. Furthermore, nothing contained in this Policy shall prohibit or limit the ability of the District to contract with any other public agency for the exchange of supplies, material, services or equipment, which exchange shall be by the mutual agreement of the respective public agencies.

§ 89101.05 Emergency Procurement

Any procurement made when there is an emergency or unforeseen condition which the Board and/or Procurement Officer has determined constitutes a threat to the public health, convenience, welfare or safety, or procurement, the lack of which would seriously impair District or departmental operations. When the Board or Procurement Officer determines an emergency exists, the Procurement Officer or his designee may execute or authorize others to execute emergency contracts for procurement. The Board shall review to ratify all acts of the Procurement Officer or his designee taken pursuant to this emergency exception, and the Board, Procurement Officer, or his designee shall use as much competition as the situation allows. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

§ 89101.06 Alternative Procurement Methods

a. The District may utilize alternative procurement methods to acquire procurement items such as those listed below when it is determined in writing by the Procurement Officer to be more practicable or advantageous to the District:

- i. Used vehicles;
- ii. Hotel conference facilities and services;
- iii. Speaker honorariums; and
- iv. Any other procurement item for which a standard procurement method is not reasonably practicable.

b. When making this determination, the Procurement Officer may take into consideration whether:

- i. The potential cost of preparing, soliciting and evaluating bids or proposals is expected to exceed the benefits normally associated with such solicitations;
- ii. The procurement item cannot be acquired through a standard procurement process; and
- iii. The price of the procurement item is fair and reasonable.

c. In the event that it is so determined, the Procurement Officer may elect to utilize an alternative procurement method which may include:

- i. Informal price quotations;
- ii. Direct negotiations; and,

iii. Direct award.

§ 89200 PROCUREMENT OF CONSTRUCTION

§ 89201 State Law

District construction projects are governed by Section 63G-6a-1302 of the Act and by this section 89200.

§ 89201.01 Alternative Approach

To the extent allowed by law, and notwithstanding anything to the contrary in this Policy, the District may procure construction pursuant to the requirements of Title 11, Chapter 39 of the Utah Code, in which event the “bid limit” calculated as provided in Utah Code Ann. § 11-39-101(1) shall replace all construction cost estimate and/or bid requirements based upon cost provisions of this Policy, including small purchase provisions under section 8500, in which event otherwise applicable requirements of this Policy shall be superseded and replaced by the provisions of Title 11, Chapter 39.

§ 89202 Construction Cost Estimate

The Procurement Officer or a designee, shall cause plans and specifications for construction projects, including the estimated cost of the improvement, to be prepared. The cost estimate shall be submitted to the Board before the District undertakes the project using its own work crew or an invitation to bid or to submit proposals is issued, or the Board will be provided an explanation of why plans and specifications and/or a cost estimate cannot be provided, as may be the case if a design-build contract is under consideration. If the estimated cost of the improvement is **\$75,000** or less, the District may make the improvement using an independent contractor without calling for formal bids or proposals as provided in Subsection 8503.04.

§ 89203 Extra Work and Change Orders

The Procurement Officer is authorized to approve extra work or change orders in an amount not to exceed \$100,000 when justified by contract specifications and deemed to be in the best interest of the District. The Board shall approve change orders in excess of \$100,000. At the conclusion of the contract, a final written report will be presented to the Board.

§ 89204 Modification of Specifications

The Procurement Officer or his designee shall have authority to waive or modify the District's construction specifications upon a determination that such waiver or modification does not significantly jeopardize the interests of the District and is reasonable and appropriate under the facts and circumstances presented. Such waivers and modifications may be based upon either requests from developers and other interested persons or District staff recommendations.

§ 89204.01 Permanent Modifications

Whenever the deletion or modification of the District's construction specifications is intended to be permanent and to apply to all or a significant number of future developments within the boundaries of the District, the Procurement Officer or his designee shall so notify the Board within a reasonable time.

§ 89204.02 Appeals

At the Procurement Officer's discretion, specific requested waivers or modifications of the District's construction specifications may be presented to the Board for final resolution and any developer or other interested party may appeal the Procurement Officer's decision regarding the modification of construction specifications to the Board.

§ 89204.03 Status of Decision Prior to Board Action

Until the Procurement Officer's decision regarding a waiver or modification of the District's construction specifications has been modified or reversed by the Board, it shall be the decision and position of the District.

§ 89205 Construction Contract Management

The method of construction contracting management utilized for any given project shall be determined by the Procurement Officer or designee in consultation with the construction manager or chief engineer. Any lawful method of construction contracting management that is determined to be feasible may be utilized.

§ 89205.01 Recommendations of Engineer

In determining which method of construction contracting management is to be used for a particular project, the recommendations of the chief engineer or construction manager, are to be given great weight. The method selected will be the method deemed to be most advantageous to the interests of the District.

§ 89205.02 Factors to Be Considered

It is intended that the Procurement Officer have sufficient flexibility in formulating the construction contract management method for a particular project to fulfill the needs of the District. Before selecting a construction contracting management method, the Procurement Officer, in consultation with the chief engineer or construction manager, shall carefully consider the following factors: (a) when the project improvements must be ready for use; (b) the type of project; (c) the extent to which the requirements of the District, and the ways in which they are to be met, are known; (d) the location of the project; (e) the size, scope, complexity, and economics of the project; (f) the amount and source of funding and any

resulting constraints or limitations necessitated by the funding source; (g) the availability, qualification and experience of District personnel to be assigned to the project and the amount of time the District personnel can devote to the project; (h) the availability, qualifications, and experience of outside consultants and contractors (including construction managers/general contractors) to complete the project under the various methods being considered; (i) the results achieved on similar projects in the past and the methods used; and (j) the comparative advantages and disadvantages of the construction contracting methods and how they might be adapted or combined to fulfill the needs of the District. The factors to be considered in achieving the purposes set forth herein are not to be construed as an exclusive list.

The following descriptions are provided for the more common construction contracting management methods which may be used by the District. The methods described are not mutually exclusive, and may be combined on a project. These descriptions are not intended to be fixed in respect to all construction projects. These descriptions may be adapted to fit the circumstances of any given project.

- c. Single Prime (General) Contractor. The single prime contractor method is typified by one business, acting as a general contractor, contracting with the District to timely complete an entire construction project in accordance with drawings and specifications provided by the District. Generally, the drawings and specifications are prepared by an architectural or engineering firm under contract with the District. Further, while the general contractor may take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with which the prime contractor has entered into subcontracts.
- d. Multiple Prime Contractors. Under the multiple prime contractor method, the District will contract directly with a number of general contractors or specialty contractors to complete portions of the project in accordance with the District's drawings and specifications. The District may have primary responsibility for the successful completion of the entire project, or the contracts may provide that one or more of the multiple prime contractors has this responsibility.
- c. Design-Build. In a design-build project, an entity, often a team of a general contractor and a designer, contract directly with the District to meet the District's requirements as described in a set of performance specifications and/or a program. Design responsibility and construction responsibility both rest with the design-build contractor. This method can include instances where the design-build contractor supplies the site as part of the package.
- d. Construction Manager Not at Risk. A construction manager is a person or firm experienced in construction who has the ability to evaluate and to implement drawings and specifications as they affect time, cost, and quality of construction and the ability to coordinate the construction of the project, including the administration of change orders as well as other responsibilities as described in the contract.

e. Construction Manager/General Contractor (Construction Manager at Risk). The District may contract with the construction manager early in a project to assist in the development of a cost effective design. In a Construction Manager/General Contractor (CM/GC) method, the CM/GC becomes the general contractor and is at risk for all of the responsibilities of a general contractor for the project, including meeting the specifications, complying with applicable laws, rules and regulations, completing the project on time and not exceeding a specified maximum price.

§ 89205.03 Written Statement

In making a decision concerning the method of construction contracting management to utilize for any given project, the Procurement Officer or designee is to execute and include in the contract file a written statement setting forth the facts which led to the selection of a particular method of construction contracting management for that project.

§ 89205.04 Design Build Contracts

The District may procure architect-engineer services and construction using a single contract with the design-build provider. The District will consult a professional engineer or a licensed architect with design-build experience as provided in Utah Code Ann. § 11-39-107(2)(c).

§ 89205.05 Construction Manager/General Contractor (CM/GC)

The District may enter into a contract for the management of a construction project which allows the contractor to subcontract for additional labor and materials that were not included in the contractor's cost proposal submitted at the time of the procurement of the construction manager/general contractor's services. The term "construction manager/general contractor" shall not refer to a contractor whose only subcontract work not included in the original cost proposal is subcontracted portions of approved change orders. Should the District utilize the CM/GM method of construction contract management, the construction manager/general contractor will be selected using a standard procurement process as defined Section 63G-6a-103 of the Act, or an exception allowed under Part 8 of the Procurement Code may be utilized. When entering into any subcontract that was not specifically included in the CM/GC's cost proposal submitted to the District, the CM/GC shall procure that subcontractor by using a standard procurement process or an exception to the requirement to use a standard procurement process in the same manner as if the subcontract work was being procured by the District.

a. As used herein, "management fee" includes only the following fees of the CM/GC:

- i. Preconstruction phase services;
- ii. Monthly supervision fees for the construction phase; and
- iii. Overhead and profit for the construction phase.

b. When selecting a CM/GC for a construction project, the evaluation committee:

- i. May score a CM/GC based upon criteria contained in the solicitation, including qualifications, performance ratings, references, management plan, certifications, and other project specific criteria described in the solicitation;
- ii. May, as described in the solicitation, weight and score the management fee as a fixed rate or as a fixed percentage of the estimated contract value;
- iii. May, at any time after the opening of the responses to the request for proposals, have access to, and consider, the management fees proposed by the offerors; and
- iv. Except as provided in Section 63G-6a-707 of the Act, may not know or have access to any other information relating to the cost of construction submitted by the offerors, until after the evaluation committee submits its final recommended scores on all other criteria.

§ 89206 Contract Clauses

Section 63G-6a-1202 of the Procurement Code encourages the District “to establish standard contract clauses to assist the [District] and to help contractors and potential contractors to understand applicable requirements.” To that end, clauses providing for adjustments in prices and time of performance and covering the following subjects will generally be included in construction contracts: (a) the unilateral right of the District to order in writing changes in the work within the scope of the contract and changes in the time of performance of the contract that do not alter the scope of the contract work; (b) variations occurring between estimated quantities of work in a contract and actual quantities; (c) suspension of work ordered by the District; and (d) site conditions differing from those indicated in the construction contract, or ordinarily encountered, except that differing site conditions clauses need not be included in a construction contract when the contract is negotiated, when the contractor provides the site or design, or when the parties have otherwise agreed with respect to the risk of differing site conditions.

§ 89206.01 Prohibited Contract Terms

- a. The District may not require that any contractor, subcontractor or material supplier engaged in the construction, maintenance, repair or improvement of public works pay its employees a predetermined amount of wages or wage rate or provide any particular type, amount or rate of employee benefits; provided, however, that any applicable federal or state minimum wage or benefit law may be enforced.
- b. No contract shall contain any provision or requirement which is prohibited by applicable law or public policy, including Section 63G-6a-1203 of the Act, which prohibits any contract provision that would require a design professional to indemnify anyone from liability claims arising out of the design professional’s services, “unless the liability claim arises from the design professional’s negligent act, wrongful act, error or omission, or other liability imposed by law” or the person being indemnified is under the design professional’s “direct or indirect control or responsibility”.
- c. A provision in a construction contract requiring a dispute arising under the contract to be resolved in a forum outside of the state of Utah is void and unenforceable as against public policy as provided in Utah Code Ann. § 13-8-3.

d. Should any prohibited provision or requirement be stated in any contract to which the District is a party, to the extent allowed by law, the contract shall be read and enforced as though the offending provision were not contained therein.

§ 89206.02 Remedy Clauses

Construction contracts may include clauses providing for appropriate remedies and covering the following subjects, among others: (a) liquidated damages; (b) specified excuses for delay or nonperformance; (c) termination of the contract for default; and (d) termination of the contract in whole or in part for the convenience of the District.

§ 89207 Retainage

Retention proceeds withheld and retained from any payment due under the terms of a construction contract may not exceed 5% of the payment, and total retention proceeds withheld may not exceed 5% of the total construction price, as provided in Utah Code Ann. § 13-8-5. Furthermore, all retention proceeds shall be placed in an interest bearing account and be accounted for separately from other amounts paid under the contract. Interest accrued on the account shall be for the benefit of the contractor and all subcontractors of every tier and will be paid after the construction project is complete and has been accepted by the District, unless the District assumes partial occupancy of the project prior to completion, in which event proportionate accrued interest will be released within 45 days after partial occupancy.

§ 89207.01 Withholding Based on Breach

Based upon a breach of the construction contract documents, the District may withhold payment, for as long as reasonably necessary, an amount which is necessary to cure the breach or default or, if the project, or portion of a project as applicable, has substantially been completed, the District may retain until final completion up to twice the fair market value of any work that has not been completed.

§ 89300 INSPECTIONS

§ 89301 Justification

Circumstances under which the District may perform inspections include inspections of the contractor's manufacturing/production facility or place of business, or any location where the work is performed, to determine: whether the definition of "responsible", as defined in Section 63G-6a-103 of the Act and in the solicitation documents, has been met or is capable of being met; and if the contract is being performed in accordance with its terms.

§ 89302 Access to Contractor's Manufacturing/Production Facilities

The District may enter a contractor's or subcontractor's manufacturing/production facility or place of business to: (a) inspect procurement items for acceptance by the District pursuant to the terms of a contract; (b) audit cost or pricing data or audit the books and records of any contractor or subcontractor; and (c) investigate in connection with an action to debar or suspend a vendor from consideration for award of a contract.

§ 89303 Inspection of Supplies and Services

§ 89303.01 Contract to Control

Contracts may provide that the District may inspect procurement items at the contractor's or subcontractor's facility and perform tests to determine whether any procurement item conforms to solicitation and contract requirements.

§ 89304 Conduct of Inspections

Inspections or tests shall be performed so as not to unduly delay the work of the contractor or subcontractor. No inspector may change any provision of the specifications or the contract without written authorization by the Procurement Officer or his designee. The presence or absence of an inspector or an inspection shall not relieve the contractor or subcontractor from any requirement of the contract. When an inspection is made, the contractor or subcontractor will be expected to provide, without charge, all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.

§ 89400 PRICE AND COST

§ 89401 Price Adjustments

A contract may allow price adjustments, but cost or pricing data shall be required in support of a proposal leading to the adjustment of any contract pricing. All accounting for contracts and contract price adjustments, including allowable incurred costs, shall be conducted in accordance with generally accepted accounting principles for government.

§ 89401.01 Exceptions

Cost or pricing data exceptions:

- a. Cost or pricing data need not be submitted when the terms of the contract state established market indices, or catalog prices or other benchmarks are used as the basis for contract price adjustments, or when prices are set by law or rule;
- b. If a contractor submits a price adjustment that is higher than established market indices, catalog prices or other benchmarks established in the contract, the Procurement Officer may request additional cost or pricing data; or

c. The Procurement Officer may waive the requirement for cost or pricing data, provided a written determination is made supporting the reasons for the waiver. A copy of the determination shall be kept in the contract file.

§ 89401.02 Computation

Adjustments in price pursuant to clauses promulgated under Subsection 89206, shall be computed in one or more of the following ways: (a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable; (b) by unit prices specified in the contract or subsequently agreed upon; (c) by the costs attributable to the events or situations under the clauses with adjustment of profit or fee, all as specified in the contract or as subsequently agreed upon; (d) in any other manner as the contracting parties may mutually agree; or (e) in the absence of agreement by the parties, by a unilateral determination by the District of the costs attributable to the events or situations under the clauses with adjustment of profit or fee, all as computed by the District in accordance with applicable provisions of section 89200, which are issued as allowed by Utah Code Ann. § 63G-6a-1206, and subject to other applicable provisions of the Act.

§ 89401.03 Defective Costs or Pricing Data

If defective cost or pricing data was used to adjust a contract price, the vendor and the District may enter into discussions to negotiate a settlement. If a settlement cannot be negotiated, either party may seek relief through the courts.

§ 89401.04 Price Analysis

a. Price analysis may be used to determine if a price is reasonable and competitive, such as when:

- i. There are a limited number of bidders or offerors;
- ii. Awarding a sole source contract; or
- iii. Identifying price outliers in bids and offers.

b. Price analysis involves a comparison of prices for the same or similar procurement items, including quality, warranties, service agreements, delivery, contractual provisions, terms and conditions, etc.

c. Examples of a price analysis include:

- i. Prices submitted by other prospective bidders or offerors;
- ii. Price quotations;
- iii. Previous contract prices;
- iv. Comparisons to the existing contracts of other public entities; and,
- v. Prices published in catalogs or price lists.

§ 89401.05 Cost Analysis

Cost analysis includes the verification of cost data. Cost analysis may be used to evaluate:

- a. Specific elements of costs;
- b. Total cost of ownership and life-cycle cost;
- c. Supplemental cost schedules;
- d. Market basket cost of similar items;
- e. The necessity for certain costs;
- f. The reasonableness of allowances for contingencies;
- g. The basis used for allocation of indirect costs; and,
- h. The reasonableness of the total cost or price.

§ 89401.06 Audit

The District may, at reasonable times and places, audit or cause to be audited by an independent third party firm, by another procurement unit, or by an agent of the District, the books, records, and performance of a contractor, prospective contractor, subcontractor, or prospective subcontractor.

§ 89401.07 Retention of Books and Records

Contractors shall maintain all records related to the contract for at least five years after the final payment, unless a longer period is required by law.

§ 89401.08 Applicable Credits

Applicable credits are receipts or price reductions which offset or reduce expenditures allocable to contracts as direct or indirect costs. Examples include purchase discounts, rebates, allowance, recoveries or indemnification for losses, sale of scrap and surplus equipment and materials, adjustments for overpayments or erroneous charges, and income from employee recreational or incidental services and food sales.

§ 89401.09 Use of Federal Cost Principles

- a. In dealing with contractors operating according to federal cost principles, the Procurement Officer may use federal cost principles, including the determination of allowable, allocable, and reasonable costs, as guidance.

b. In contracts not awarded under a program which is funded by federal assistance funds, the Procurement Officer may explicitly incorporate federal cost principles into a solicitation, and thus into any contract awarded pursuant to that solicitation. The Procurement Officer and the contractor, by mutual agreement, may incorporate federal cost principles into a contract during negotiation or after award.

e. In contracts awarded under a program which is financed in whole or in part by federal assistance funds, all requirements set forth in the assistance document, including specified federal cost principles, must be satisfied. To the extent that the cost principles specified in the grant document conflict with the cost principles issued pursuant to Section 63G-6a-1206 of the Act, the cost principles specified in the grant shall control.

§ 89401.10 Authority to Deviate from Cost Principles

Before the District may deviate from the cost principles set forth in this Policy, a written determination must be made by the Procurement Officer specifying the reasons for the deviation. The written determination shall be made part of the contract file.

§ 89500 MULTIPLE AWARD CONTRACTS – INDEFINITE QUANTITY CONTRACTS

As authorized under Section 63G-6a-1204.5 of the Act, the District may enter into multiple award contracts.

§ 89501 Multiple Award

A multiple award contract is a procurement process where two or more bidders or offerors are awarded a contract under a single solicitation. Purchases are made through an individual order placed with one of the contractors pursuant to the procedures established in the solicitation and the contract. Contractors receiving a contract award are not guaranteed that procurement items will be purchased from their contracts. However, they will be given a fair opportunity to be considered for each order in each contract category.

§ 89501.01 Use

A multiple award contract may be awarded under a single solicitation to two or more bidders or offerors when similar procurement items are needed for:

- a. Coverage on a regional basis or based on other criteria specified in the solicitation such as:
 - i. Delivery;
 - ii. Service;
 - iii. Product availability; or
- b. Compatibility with existing equipment or infrastructure.

§ 89501.02 Solicitation

In addition to the requirements set forth in Sections 63G-6a-603 and 63G-6a-703 of the Act, when it is anticipated that a procurement will result in multiple contract awards, the solicitation shall include a statement that:

- a. Indicates that contracts may be awarded to more than one bidder or offeror;
- b. Specifies whether contracts will be awarded on a regional basis; and
- c. Describes specific methodology or a formula that will be used to determine the number of contract awards.

§ 89501.03 Invitation for Bids

Multiple award contracts in an invitation for bids shall be made in accordance with Part 6 of the Act to the lowest responsive and responsible bidders meeting the objective criteria described in the invitation for bids and may be awarded to provide adequate regional coverage, delivery, or product availability using the following methods:

- a. Lowest total aggregate bid provided:
 - i. The solicitation indicates that the lowest total aggregate bid will be used to determine a specified number of bidders, a break in prices specifically stated in the solicitation, such as any price within a specific percentage of the lowest responsive and responsible bid price, or other methodology described in the solicitation to award contracts;
- b. Lowest bid by Category provided:
 - i. The solicitation indicates that contracts will be awarded based on the lowest bid in a category;
- c. Lowest bid by line item provided:
 - i. The solicitation indicates that contracts will be awarded based on the lowest bid per line item.
- d. Any combination of (a), (b) and (c) above, or
- e. Any other specific objective methodology described in the solicitation that is approved by the Procurement Officer.

§ 89501.04 Request for Proposals

The award of multiple contracts in a request for proposals shall be made in accordance with Part 7 of the Act and may be awarded on a regional basis or based on other criteria set forth

in the solicitation and in accordance with point thresholds and other methodology set forth in the RFP describing how multiple award contracts will be awarded with enough specificity to avoid the appearance of favoritism affecting the decision of whether to award multiple contracts and who should receive a multiple award contract.

§ 89501.05 Multiple Award Contracts for Unidentified Procurement Items

a. An unidentified procurement item is defined as a procurement item that, at the time the solicitation is issued:

- i. Has not been specifically identified but will be identified at some time in the future, such as an approved vendor list or approved consultant list.
- ii. Does not have a clearly defined project or procurement specific scope of work; and
- iii. Does not have a clearly defined project or procurement specific budget.

b. Unidentified procurement items may be procured under approved vendor list thresholds established by the Board.

c. An RFP or other solicitation issued for a multiple award contract for unidentified procurement items must specify the methodology that will be used to select which vendor under the multiple award contract will be selected to receive an order.

- i. The methodology must include procedures to document that the District is obtaining best value, including an analysis of cost and other evaluation criteria outlined in the solicitation.
- ii. The methodology must also ensure the fair and equitable treatment of each vendor on the multiple award contract, which may include using one of the following methods to select a vendor:

- (1) Using a rotation system, organized alphabetically, numerically, or randomly;
- (2) Assigning a potential contractor to a specified geographical area;
- (3) Classifying each potential contractor based on the potential contractor's field or area of expertise; or
- (4) Obtaining quotes or bids from two or more contractors.

§ 89501.06 Ordering From Multiple Award Contracts

a. When buying procurement items under a multiple award contract that was awarded through an invitation for bids, the District shall obtain a minimum of two quotes for the procurement item(s) being purchased and place the order with the contractor with the lowest quoted price.

- i. The requirement to obtain two or more quotes is waived when there is only one bidder award for the particular procurement item or geographical area.

b. When buying procurement items under a multiple award contract that was awarded through an RFP, the District shall place orders based on the District's determination as to which contractor or procurement item provides the best value to the District, taking into consideration price and the other specific non-price criteria set forth in the RFP.

c. A multiple award contract may not be used to steer purchases to a favored contractor or use any other means or methods that do not result in fair consideration being given to all contractors that have been awarded a contract under a multiple award.

§ 89501.07 Primary and Secondary Contracts

a. Designations of multiple award contracts as primary and secondary may be made if a statement to that effect is contained in the solicitation documents.

b. When the Procurement Officer or designee determines that the need for a procurement item will exceed the capacity of any single primary contractor, secondary contracts may be awarded to additional contractors.

c. Purchases under primary and secondary contracts will be made, initially from the primary contractor offering the lowest contract price until the primary contractor's capacity has been reached or the items are not available from the primary contractor, then from secondary contractors in progressive order from lowest price or best availability to the next lowest price or best availability, and so on.

§ 89501.08 Intent to Use

If a multiple award is anticipated prior to issuing a solicitation, the method of award shall be stated in the solicitation.

§ 89502 Contracts and Change Orders -- Contract Types

The District may use contract types to the extent authorized under Section 63G-6a-1205 of the Act.

§ 89503 Prepayments

Prepayments are subject to the restrictions contained in Section 63G-6a-1208 of the Act.

§ 89504 Leases of Personal Property

§ 89504.01 Requirements

Leases of personal property are subject to the following:

a. A lease (including a lease with a purchase option) may be entered into provided that the District complies with Section 63G-6a-1209 of the Act and:

- i. The lease is in the best interest of the District;
- ii. All conditions for renewal and costs of termination are set forth in the lease; and
- iii. The lease is not used to avoid a competitive procurement.

§ 89504.02 Completion Requirement

Lease contracts will be conducted with as much competition as practicable under the circumstances.

§ 89505 Modification of Contract Terms

Contract clauses may be as set forth in standard documents approved from time to time by the Board maintained at the office of the District. However, the Manager, the Procurement Officer or the Board may modify the clauses for inclusion in any particular contract. Any variation may be supported by a written determination that describes the circumstances justifying the variation, and notice of any material variation may be included in the invitation for bids or requests for proposals.

§ 89600 PROCUREMENT OF PROFESSIONAL SERVICES

§ 89601 Hiring a Professional Architect, Engineer or Surveyor

The District may not legally be obligated to consider more than one architect, engineer or surveyor when procuring those professional services. However, should more than one such professional be considered for engagement, the Procurement Officer or his designee and/or the Board shall consider, as a minimum, in the selection process those elements required by Utah Code Ann. § 17B-1-108: (a) the qualifications, experience and background of each firm (or individual if the professional is not part of a firm) submitting a proposal; (b) the specific individual(s) assigned or to be assigned to the project and the time commitments of each to the project; and (c) the project schedule and approach to the project that each firm (or individual) will take. The District may engage the services of a professional architect, engineer or surveyor based on the above criteria rather than based solely on the lowest cost. Subject to the above, the provisions of Part 15 of the Procurement Code apply to the procurement of services within the scope of the practice of architecture as defined in Section 58-3a-102 or professional engineering as defined in Section 58-22-102 of the Utah Code.

§ 89601.01 Architect-Engineer Evaluation Committee

The Procurement Officer shall designate members of the Evaluation Committee. The evaluation committee must consist of at least three members who are qualified under Section 63G-6a-707 of the Act, at least one of whom is well qualified in the profession of architecture or engineering.

§ 89601.02 Request for Statements of Qualifications

- a. The District will issue a public notice for a request for statements of qualifications to be used in ranking architects or engineers.
- b. A request for statement of qualifications will state:
 - i. The type of procurement item to which the request for statements of qualifications relates;
 - ii. The scope of the work to be performed;
 - iii. The instructions and the deadline for providing information in response to the request for statements of qualifications; and
 - iv. Criteria to be used to evaluate statements of qualifications including:
 - (1) Basic information about the person or firm;
 - (2) Experience and work history;
 - (3) Management and staff;
 - (4) Qualifications;
 - (5) Licenses and certifications;
 - (6) Applicable performance ratings;
 - (7) Financial statements; and
 - (8) Other pertinent information.
- c. Key personnel identified in a statement of qualifications may not be changed without the advance written approval of the Procurement Officer.
- d. Architects and engineers shall not include cost information in a response to a request for statements of qualifications

§ 89601.03 Evaluation of Statements of Qualifications

The evaluation committee shall evaluate statements of qualifications in accordance with Section 63G-6a-707 of the Act to rank (score) architects or engineers.

§ 89601.04 Negotiation and Award of Contract

The Procurement Officer or designee shall negotiate a contract with the most qualified firm for the required services at compensation determined to be fair and reasonable.

§ 89601.05 Failure to Negotiate Contract With the Highest Ranked Firm

- a. If fair and reasonable compensation, contract requirements, and contract documents cannot be agreed upon with the highest ranked firm, the Procurement Officer shall advise the firm in writing of the termination of negotiations.

b. Upon failure to negotiate a contract with the highest ranked firm, the Procurement Officer shall proceed in accordance with Section 63G-6a-1505 of the Procurement Code.

§ 89601.06 Notice of Award

a. The District may award a contract to the highest ranked firm with which the fee negotiation was successful.

b. Notice of the award shall be made available to the public.

§ 89602 Consulting Contract Extensions

To the extent allowed by law (see Section 63G-6a-1204 of the Act) contracts with consultants providing professional or technical services, such as engineering, accounting, legal and architectural services, may be extended by the Procurement Officer.

§ 89700 BONDS

Performance and other bonds in such amounts as shall be reasonably necessary to protect the interests of the District may be required. The nature, form and amount of such bonds are to be described in the notice inviting bids or in the request for competitive sealed proposals, regardless of the procurement type (construction, equipment, etc.).

§ 89701 Bid Security Requirements

§ 89701.01 Construction

Invitations for Bids and Requests for Proposals for construction contracts estimated to cost more than **\$75,000** generally will require the submission of a bid bond in an amount equal to at least 5% of the bid, at the time the bid is submitted, and the Procurement Officer may require a bid bond for a construction contract that is estimated to cost **\$75,000** or less.

§ 89701.02 Other Procurements

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 Officer determines it to be in the best interest of the District

§ 89701.03 Acceptable Bid Security Not Furnished

If a bid security is required and acceptable bid security is not furnished, the bid shall be rejected as nonresponsive, unless the failure to comply is determined by the Procurement Officer 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 of this Policy and the contractor provides

acceptable bid security by the close of business of the next succeeding business day after being notified of the defective bid security;

b. Only one bid is received, and there is not sufficient time to re-solicit;

c. The amount of the bid security submitted, though less than the amount required by the Invitation for Bids or RFP, 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 which is allowed by this Policy, if the bidder increases the amount of the guarantee to required limits within 2 business days after the bid opening.

§ 89701.04 Forfeiture

If the successful bidder fails or refuses to enter into the contract or furnish the additional bonds required as provided above, the bidder's bid security may be forfeited.

§ 89702 Performance Bonds for Construction Contracts

A performance bond is required for all construction contracts estimated to cost in excess of **\$75,000**, in the amount of 100% of the contract price. The performance bond shall be delivered by the contractor to the District 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 next lowest responsive and responsible bidder or the next highest ranked offeror.

§ 89703 Surety or Performance Bonds for Non-construction Procurement Items

§ 89703.01 Permissive

A surety or performance bond may be required on any non-construction contract as the Procurement Officer deems necessary to guarantee the satisfactory completion of a contract, provided the Invitation for Bids or Request for Proposals contains a statement that a surety or performance bond is required in an amount:

a. Equal to the amount of the bid or offer;

b. Equal to the project budget or estimated project cost, if the budget or estimated project cost is published in the solicitation documents;

c. Equal to the previous contract cost, if the previous contract cost is published in the solicitation documents; or

d. The Invitation for Bids or Request for Proposals contains a statement that a surety or performance bond, in an amount less than the amount determined under (a), is required; and

e. The Invitation for Bids or Request for Proposals contains a detailed description of the work to be performed or item(s) to be provided for which the surety or performance bond is required.

§ 89703.02 Limitation

Surety or Performance Bonds should not be used to unreasonably eliminate competition or be of such unreasonable value as to eliminate competition.

§ 89704 Payment Bonds

A payment bond is required for all construction contracts estimated to cost in excess of **\$75,000**, in the amount of 100% of the contract price. If a contractor fails to timely 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 next lowest responsive and responsible bidder or the next highest ranked offeror.

§ 89704.01 Waiver

The Procurement Officer may waive any bonding requirement if it is determined in writing by the Procurement Officer that:

- a. Bonds cannot reasonably be obtained for the work;
- b. The cost of the bond exceeds the risk to the District; or
- c. Bonds are not necessary to protect the interests of the District.

§ 89704.02 Failure to Obtain

If the District fails to obtain a payment bond for a construction project, there may be liability to anyone furnishing labor or supplying materials for the construction project as provided in Utah Code Ann. § 14-11-19.

§ 89800 PROHIBITED ACTS/ETHICS

§ 89801 Supremacy of Law

Nothing contained in this Policy shall be construed to authorize conduct that would constitute a crime under any applicable law or ordinance. The requirements of section 89800 shall apply in addition to other legal requirements including, but not limited to, Utah Code Ann. §§ 67-16-1 et. seq. (the Utah Public Officers and Employees Ethics Act which, among other things, prohibits

the improper disclosure or use of private, controlled or protected information) and applicable sections of Chapter 8 of Title 76 of the Utah Code (dealing with offenses against the administration of government such as bribery). It is the general policy of the District that employees and members of the Board not receive compensation for assisting any person or entity in a transaction involving the District. For any departure from that general policy to be countenanced, the employee or Board Trustee must sign and file the sworn, written statement required by Utah Code Ann. § 67-16-6.

§ 89802 Conflict of Interest

No member of the Board or employee of the District may have a direct or indirect interest in any contract entered into by the District unless such interest is disclosed to the Board before the contract is approved. A Board member or employee will be presumed to have an indirect interest in any contract in which a relative of the Board member or employee, as “relative” is defined in Utah Code Ann. § 52-3-1(1)(d) (a father, mother, husband, wife, son, daughter, sister, brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law), holds a direct interest in the contract. Any Trustee who is interested in a proposed contract with the District shall disclose that interest to the other Trustees, shall not participate in any Board discussion of the contract, and shall abstain from voting on the contract. An interested Trustee may, however, be counted toward the required quorum for any Board meeting attended by the interested Board member. Any employee who has an interest in a proposed contract with the District shall so notify the General Manager and the Board in writing. Such employee may not participate in any discussion or evaluation of the proposed contract or of any competing bids or proposals. The Board may approve a contract in which a Trustee or employee has a known interest, provided the known interest has been properly disclosed, and the Trustee or employee has recused herself from any involvement in the procurement process. A violation of the requirements of this Subsection, including the required advance notification of any conflict of interest, may subject the violator to discipline, including dismissal or termination. Approval of a contract in which a relative of a District Trustee or employee holds a direct interest shall not be invalid, and the Board member or employee shall not be subject to sanctions, if the Trustee or employee was not aware of the interest of the relative prior to the approval of the contract. The burden shall be on the Trustee or employee to establish this lack of knowledge, should an issue be raised concerning the contract in which the relative holds a direct interest.

§ 89803 Nepotism Prohibited

Nothing contained in this Policy shall be construed to authorize a violation of Utah Code Ann. § 52-3-1, which generally prohibits the employment of relatives.

§ 89804 Improper Influence

No employee or official of the District shall use his/her position with the District to pressure, coerce, or otherwise improperly induce any vendor or other person to provide a special benefit to the employee or official that would not generally be available to others. By way of illustration, no employee or Trustee may threaten or imply that a vendor's failure to provide a favorable price

or other concession on a personal purchase will or may jeopardize the vendor's relationship with the District.

§ 89805 Collusion

Any agreement or collusion among vendors or prospective vendors in restraint of competition and/or fairness shall render the bids/proposals of each such vendor void, if detected before the contract is awarded, or constitute grounds for the District to void any contract to a participant in the collusion if finally determined after the contract has been awarded, and may also result in the debarment of participating potential vendors.

§ 89806 Sales Taxes

As a governmental entity, the District is not required to pay a sales tax on certain of its purchases. No employee or official shall use the District's immunity from sales tax collection to avoid the payment of sales tax on personal purchases, except as otherwise provided in Subsection 89808.01 below.

§ 89807 Gifts and Gratuities

No employee or official shall accept any gift or gratuity from any vendor who deals, or desires to deal, with the District that would violate any provision of state law, criminal or otherwise. This restriction is not intended to prohibit small promotional gifts, such as calendars, pens, candy, note pads, etc., of a relatively nominal value that are commonly utilized for public relations or advertising purposes and which do not otherwise violate state law under Utah Code Ann. § 67-16-5. Similarly, this restriction is not intended to prohibit business lunches and dinners provided they are in harmony with the District's rules and regulations and do not violate applicable state law.

§ 89808 Personal Purchases

No District employee or official shall purchase goods or services for personal use and ownership using the District's name, any District account, or District funds without prior approval by the Board. The District shall be reimbursed, either directly or through payroll withholding, for the costs of all such goods and services that are purchased for individual use and ownership by a District employee or Trustee.

§ 89808.01 No Personal Use or Ownership - Exceptions

Notwithstanding the foregoing prohibition, with the approval of the Manager, goods and services may be purchased in the name of the District, through a District account, and/or utilizing District funds, even though those goods and services will become the personal property of employees or officials of the District, provided that any such good or service is to

be utilized by the employee or official in performing his or her duties for the District. For example, a monetary allowance may be provided by the district for work boots for members of a District work crew.

§ 89808.02 Personal Purchases - Validity

Nothing contained in this Policy shall prohibit or prevent either employees or officials from purchasing from vendors who also provide goods or services to the District provided that such private purchases are clearly denoted as such and are made in the name of the employee or official. Furthermore, nothing contained in this Policy shall prohibit employees or officials from receiving discount or membership cards from District vendors provided that such cards and memberships are in the name of the individual employee or official, all purchases are billed to and paid for directly by the employee or official, and such cards and memberships are made available to members of the public as a whole, or to a subgroup of the public, and are not based upon the employee’s or official’s position with the District.

§ 89850 CONTROVERSIES AND PROTESTS

§ 89851 Procurement Code Provisions

§ 89851.01 Part 16:

Controversies and protests shall be conducted in accordance with the requirements set forth in Sections 63G-6a-1601 through -1604 of the Act. This section 89850 provides additional requirements and procedures, and will be used in conjunction with the Procurement Code. The Procurement Officer shall be the “Protest Officer”.

§ 89851.02 Part 19:

Part 19 of the Procurement Code, Sections 63G-6a-1901 through -1911 of the Act, contain provisions regarding:

- a. Limitations on challenges of:
 - i. A procurement;
 - ii. A procurement process;
 - iii. The award of a contract relating to a procurement;
 - iv. A debarment; or
 - v. A suspension; and
- b. The effect of a timely protest or appeal;
- c. The costs to or against a protester;
- d. The effect of prior determinations by employees, agents, or other persons appointed by the District;

- e. The effect of a violation found after award of a contract;
- f. The effect of a violation found prior to the award of a contract;
- g. Interest rates; and
- h. A listing of determinations that are final and conclusive unless they are arbitrary and capricious or clearly erroneous.

§ 89852 General

Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Protest Officer.

§ 89852.01 Deadline

A protest with respect to the invitation for bids or a request for proposals is to be submitted in writing prior to the opening of bids or the closing date for proposals, unless the aggrieved person did not know and should not have known of the facts giving rise to the protest prior to the bid opening or the closing date for proposals. In any event, the protest shall be submitted in writing within 7 days after the aggrieved person knows or should have known of the facts giving rise thereto. Anyone failing to file a protest within the time prescribed may not:

- a. Protest to the Protest Officer a solicitation or award of a contract; or
- b. File an action or appeal challenging a solicitation or award of a contract before an appeals panel, a court, or any other forum.

§ 89852.02 Protest Document

A person filing a protest shall include in the filing document:

- a. The person's address of record and e-mail address of record; and
- b. A concise statement of the grounds upon which the protest is made.

§ 89852.03 Resolution

The Protest Officer or designee shall have the authority to settle and resolve a protest. Furthermore, if at any time during the protest process it is discovered that a procurement is out of compliance with any part of the Procurement Code or this Policy, including errors or discrepancies, the Protest Officer may take administrative action to correct or amend the procurement to bring it into compliance, correct errors or discrepancies, or cancel the procurement.

§ 89853 Verification of Legal Authority

A person filing a protest in a representative capacity may be asked to verify that the person has legal authority to file the protest on behalf of the public or private corporation, governmental entity, sole proprietorship, partnership, or unincorporated association (the “intervenor”).

§ 89854 Intervention in a Protest

After a timely protest is filed in accordance with the Utah Procurement Code, the Protest Officer shall notify awardees of the subject procurement, and may notify others, of the protest.

§ 89854.01 Period of Time to File

A motion to intervene must be filed with the Protest Officer no later than ten days from the date such notice is sent by the Protest Officer. Only those motions to intervene made within the time prescribed in this section 89850 will be considered timely. The District and the intended beneficiaries of the procurement (the intended awardee of the procurement) are automatically considered to be parties of record and need not file a motion to intervene.

§ 89854.02 Contents of a Motion to Intervene

A copy of any motion to intervene will be mailed or e-mailed to the party protesting the procurement.

Any motion to intervene must state, to the extent known, the position taken by the intervenor and the basis in fact and law for that position. A motion to intervene must also state the intervenor's interest in sufficient factual detail to demonstrate that:

- f. The intervenor has a right to participate which is expressly conferred by statute or by applicable rule, order, or other action;
- b. The intervenor has or represents an interest which may be directly affected by the outcome of the proceeding, including an interest as a consumer; customer; competitor; security holder of a party; or the person’s participation is in the public interest.

§ 89854.03 Granting of Status

If no written objection to a timely motion to intervene is filed with the Protest Officer within seven calendar days after the motion to intervene is received by the protesting person, the intervenor becomes a party at the end of this seven day period. If an objection is timely filed, the intervenor becomes a party only when the motion is expressly granted by the Protest Officer based on a determination that a basis for intervention exists as stated in this section 89850.

§ 89854.04 Late Motion

If a Motion to Intervene is not timely filed, the Motion shall be denied by the Protest Officer.

§ 89855 Delay in Award of Contract

In the event of a timely protest under Subsection 89851 above, the District will not proceed further with the solicitation or with the award of the contract until all administrative and judicial remedies have been exhausted or until the Procurement Officer, in consultation with appropriate District personnel, makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the District.

§ 89856 Proceedings to Debar/Suspend Potential Contractors

§ 89856.01 Debarment

After reasonable notice to the person/entity involved and a reasonable opportunity for that person/entity to be heard, the Procurement Officer, after consulting with the District's attorney, shall have authority to debar a person/entity for cause from consideration of award of a contract for a period not exceeding three years.

§ 89856.02 Suspension

The Procurement Officer, after consultation with the District's attorney, shall have authority to suspend a person/entity from consideration for the award of a contract if there is probable cause to believe that the person/entity has engaged in any activity which might lead to debarment. The suspension shall not be for a period exceeding three months unless an indictment has been issued for an offense which would be a cause for debarment as set forth in Utah Code Ann. § 63G-6a-904, in which event the suspension shall, at the request of the District's attorney, remain in effect until after the trial of the suspended person.

§ 89857 Resolution of Controversies

The Procurement Officer is authorized to settle and resolve a controversy which arises between the District and a contractor under or by virtue of a contract. This includes, without limitation, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

§ 89858 Written Decision

The Procurement Officer shall promptly issue a written decision regarding any protest, debarment or suspension or contract controversy if it is not settled by mutual agreement. The decision shall state the reasons for the action taken and inform the protestor, contractor, or prospective contractor of the right to administrative or judicial review as provided in Parts 17 and 18 of the Act.

§ 89859 Timing and Finality of Decision

§ 89859.01 Adverse Decision Presumed After 30 Days

As provided in Section 63G-6a-1603(9) of the Act, if a final written decision regarding a protest is not issued within 30 calendar days after the day on which a written request for a final decision is filed with the Protest Officer, or within such longer period as may be agreed upon by the parties, the protestor, prospective vendor, or vendor may proceed as if an adverse decision had been received.

§ 89859.02 Finality

Except as otherwise specifically provided in this section 89850, a decision of the Procurement Officer shall be effective until stayed or reversed on appeal.

§ 89859.03 Written Decision

Once available, a copy of the decision shall be immediately mailed or otherwise furnished to the protestor, prospective contractor, or contractor and any parties that have been allowed to intervene in the proceeding. The decision shall be final and conclusive unless the protestor, prospective contractor, or contractor (a “vendor”) timely files and appeal to an appeals panel established by the Procurement Policy Board in accordance with Sections 63G-6a-1701 to - 1706 of the Act within the applicable 7 day statute of limitations period specified in Section 63G-6a-1702 of the Act.

§ 89860 Violation of Law

If, before an award of a contract, it is finally determined administratively or upon administrative or judicial review that a solicitation or proposed award of a contract is in violation of law, the solicitation or proposed award shall be canceled or revised to comply with applicable law, unless different relief is mandated.

§ 89861 Options After Adverse Determination

If, after an award of a contract, it is finally determined administratively or upon administrative or judicial review that a solicitation or award of a contract is in violation of law, provided that the recipient of the award has not acted fraudulently or in bad faith, unless different relief is ordered: (a) the contract may be ratified and affirmed by the District if it is determined by the Board that doing so is in the best interest of the District; or (b) the contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract prior to termination, plus a reasonable profit.

§ 89862 Fraudulent Conduct by Contractor

If, after an award of a contract, it is determined administratively or upon administrative or judicial review that a solicitation or award of a contract is in violation of law and if the recipient

of the award has acted fraudulent or in bad faith, unless different relief is ordered: (a) the contract will be declared null and void; or (b) the contract may be ratified and affirmed if such action is in the best interest of the District, as determined by the Board, without prejudice to the District's rights to any appropriate damages.

§ 89863 Appeal to the Board

Nothing provided in this section 89850 shall limit the ability and authority of the Board to provide for a two-step appeal process at the District level provided that the entire proceeding is completed within the time limits stated in this section 89850 and in Part 16 of the Procurement Code.