

R277-122 received final approval by the Utah State Board of Education on December 6, 2018. R277-122 is published in the January 1, 2019 Utah State Bulletin, subject to a 30-day comment period, with a first possible effective date of February 7, 2019.

**R277. Education, Administration.**

**R277-122. Board of Education Procurement.**

**R277-122-1. Authority and Purpose.**

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Title 63G, Chapter 6a, Utah Procurement Code.

(2) The purpose of this rule is to adopt and incorporate by reference Title R33, Purchasing and General Services, with exceptions as described in this rule.

**R277-122-2. Definitions.**

(1) "Professional service provider" means a provider of a professional service as defined in Subsection 63G-6a-103(61) and includes an expert in educational instruction and teaching.

(2) "Responsible" means the same as that term is defined in Subsection 63G-6a-103 (75).

(3) "Responsive" means the same as that term is defined in Subsection 63G-6a-103 (76).

(4) "Unsolicited proposal" means the same as that term is defined in Subsection 63G-6a-712(1).

**R277-122-3. Incorporation of Title R33 With Exceptions.**

(1) The Board adopts and incorporates by reference Title R33, Purchasing and General Services, as in effect on April 1, 2017, with the exceptions described in this section.

(2) The Board does not adopt Section R33-8-101b.

(3) The Board adopts Section R277-122-5 in place of Sections R33-5-104 and R33-

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(4) The Board adopts Section R277-122-6 in place of Section R33-5-108.

(5) The Board adopts Section R277-122-7 in place of Section R33-7-704.

([3]6) The Board adopts Section R277-122-[5]9 in place of Sections R33-9-102 and R33-9-103.

([4]7) The Board adopts Section R277-122-[6]10 in place of Section R33-12-201.

([5]8) The Board adopts Section R277-122-[8]12 in place of Section R33-12-608.

([6]9) The Board adopts Section R277-122-[9]13 in place of Subsections:

(a) R33-16-101a (2)(a); and

(b) R33-16-301 (4).

~~[(7) The Board adopts Section R277-122-10 in place of Sections R33-5-104 and R33-5-107.~~

~~———(8) The Board adopts Section R277-122-11 in place of Section R33-5-108.]~~

**R277-122-4. Head of the Procurement Unit Designated.**

The Board designates the Board's Director of Purchasing as the head of the procurement unit.

~~**[R277-122-5. Cancellation Before Award.**~~

~~———(1) A solicitation may be cancelled prior to a contract award if the head of the procurement unit determines the cancellation is:~~

~~———(a) in the best interest of the Board; and~~

~~———(b) supported by a reasonable and good faith justification.~~

~~———(2) The head of the procurement unit shall include notice of the Board's right of cancellation described in Subsection (1) in each Board solicitation.~~

~~**R277-122-6. Establishment of Terms and Conditions.**~~

~~———The head of the procurement unit shall develop standard terms and conditions for~~

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~~use with Board contracts and agreements.~~

**~~R277-122-7. Requirements for Cost or Pricing Data.~~**

~~—— (1) If cost or pricing data is required by Section 63G-6a-1206 or Section R33-12-601, the head of the procurement unit shall require the person who seeks a cost-based contract to submit:~~

~~—— (a) factual and verifiable information related to the contractor's estimated cost for completing a project on:~~

~~—— (i) the date the contract is signed by both parties; or~~

~~—— (ii) an earlier date agreed to by both parties that is:~~

~~—— (A) as close as practicable to the date described in Subsection (1)(a)(i); and~~

~~—— (B) before prudent buyers and sellers would reasonably expect price negotiations to be affected significantly; and~~

~~—— (b) underlying data related to a contractor's estimate that can be reasonably expected to contribute to the soundness of estimates of future costs and the validity of determinations of costs already incurred, including:~~

~~—— (i) vendor quotations;~~

~~—— (ii) nonrecurring costs;~~

~~—— (iii) information on changes in production methods and in production or purchasing volume; ——~~

~~—— (iv) data supporting projections of business prospects and objectives and related operations costs;~~

~~—— (v) unit-cost trends such as those associated with labor efficiency; ——~~

~~—— (vi) make-or-buy decisions; ——~~

~~—— (vii) estimated resources to attain business goals; or~~

~~—— (viii) information on management decisions that could have a significant bearing on costs.~~

~~—— (2) Submission of certified cost or pricing data applies to contracts of \$50,000.00 or greater if the contract price is not established by:~~

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- ~~—— (a) adequate price competition;~~
- ~~—— (b) established catalogue or market prices; or~~
- ~~—— (c) law or regulation.~~

**~~R277-122-8. Use of Federal Cost Principles.~~**

~~—— The head of the procurement unit shall apply the federal cost principles described in 2 CFR Part 200, Subpart E in determining which costs expended under Board contracts are reasonable, allocable, and allowable.~~

**~~R277-122-9. Grounds for Protest - Intervention in a Protest.~~**

~~—— (1) A bidder who files a protest shall include in the bidder's submission a concise statement of the grounds for the protest, which shall include the facts leading the protestor to contend that a grievance has occurred, including but not limited to specifically referencing:~~

- ~~—— (a) the circumstances described in Subsections R33-16-101a(2)(a) (i) through (iii);~~
- ~~—— (b) a provision of the solicitation alleged to be:~~
  - ~~—— (i) unduly restrictive;~~
  - ~~—— (ii) anticompetitive; or~~
  - ~~—— (iii) unlawful;~~
- ~~—— (c) an alleged material error made by the evaluation committee or conducting procurement unit; or~~
- ~~—— (d) the circumstances described in Subsections R33-16-101a(2)(a)(vi) and (vii).~~

~~—— (2) A motion to intervene in a post-award protest may only be made by the announced awardee.~~

- ~~—— (3) A person may intervene in a pre-award protest, if the person's proposal:~~
  - ~~—— (a) was evaluated;~~
  - ~~—— (b) found to be responsive; and~~
  - ~~—— (c) the head of the procurement unit finds the person to be responsible.]~~

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**R277-122-[40]5. Small Purchases of Procurement Items Other than Professional Services and Consultants.**

(1) The [Superintendent] head of the procurement unit shall make small purchases in accordance with the requirements set forth in Section 63G-6a-506 and this Section R277-122-10.

(2) Unless otherwise required as part of another standard procurement process being used in conjunction with a small purchase, the [Superintendent] head of the procurement unit need not utilize a solicitation or provide public notice to conduct a small purchase.

(3) The [Superintendent] head of the procurement unit may make a small purchase of a procurement item other than a professional service by:

(a) direct award without seeking competitive bids or quotes up to the following threshold amounts:

(i) [~~\$3,500~~] \$10,000 for one or more procurement items purchased at the same time from one source; and

(ii) [~~\$50,000~~] \$75,000 for multiple procurement items purchased in a 12-month period from one source; and

(b) subject to Rule R33-4-109, obtaining quotes from a minimum of two vendors and purchasing the procurement item from the responsible vendor offering the lowest quote for a purchase of up to [~~\$50,000~~] \$75,000 for one or more procurement items purchased at the same time from a single source.

(4) When conducting a purchase under Subsection (3)(b) in conjunction with an approved vendor list, the [Superintendent] head of the procurement unit:

(a)(i) may obtain quotes from all the vendors on the approved vendor list; or

(ii) may obtain quotes from a minimum of two vendors on the approved vendor list, using one or more of the following methods to select vendors from whom to obtain quotes:

(A) a rotation system, organized alphabetically, numerically, or randomly;

(B) the geographic area serviced by each vendor;

(C) each vendor's particular expertise or field;

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(D) solicitation of an additional quote from the vendor that provided the lowest quote on the most recently completed procurement conducted by the Board using the approved vendor list; or

(E) another method approved by the head of the procurement unit;

(b) shall document that all vendors on the approved vendor list have a fair and equitable opportunity to obtain a contract; and

(c) shall purchase the procurement item from the responsible vendor on the approved list offering the lowest quote.

(5) Whenever practicable, the [Superintendent] head of the procurement unit shall use a rotation system or other system designed to allow for competition when using a small purchase process.

(6) In the process of obtaining a competitive quote, the [Superintendent] head of the procurement unit shall record and maintain the following as a government record:

(a) the names of the vendors from whom quotes were requested and received; and

(b) the date of receipt and amount of each quote.

(7) The [Superintendent] head of the procurement unit shall comply with all applicable laws and rules in the conduct of small purchases, including:

(a) Subsection 63G-6a-506(8);

(b) Title 63G, Chapter 6a, Part 24, Unlawful Conduct and Penalties; and

(c) Sections R33-24-104 through R33-24-106.

**R277-122-[41]6. Small Purchases of Professional Service Providers and Consultants.**

(1) The [Superintendent] head of the procurement unit shall make small purchases of professional services in accordance with the requirements set forth in Section 63G-6a-506 and this Section R277-122-11.

(2) Unless otherwise specifically required in this rule or as part of another standard procurement process being used in conjunction with a small purchase, the [Superintendent] head of the procurement unit need not utilize a solicitation or provide

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public notice to conduct a small purchase of professional services.

(3) The [Superintendent] head of the procurement unit may procure professional services:

(a) up to a maximum of [~~\$3,500~~] \$10,000 by direct negotiation with any professional services provider or consultant determined in writing by the [Superintendent] head of the procurement unit to be qualified to provide the professional service; and

(b) up to a maximum of \$100,000 by:

(i) subject to Rule R33-4-109, obtaining quotes from a minimum of three professional services providers or consultants determined in writing by the [Superintendent] head of the procurement unit to be qualified to provide the professional services; and

(ii) making the purchase from the professional service provider or consultant determined in writing by the [Superintendent] head of the procurement unit to provide the Board with the best value, comparing qualifications and price.

(4) The head of the procurement unit may utilize the process set forth in Subsection (3)(b) to make purchases from multiple professional service providers or consultants if:

(a) multiple professional service providers or consultants of the same type are required to fulfill the need for the professional service;

(b) the total amount awarded to the selected professional service providers or consultants does not exceed \$250,000;

(c) a request for qualifications and quotes is published in accordance with Section 63G-6a-112;

(d) the request for qualifications and quotes states that the Board may make a purchase from multiple professional service providers or consultants; and

(e) all responses received are reviewed and considered when selecting the best value professional service providers or consultants.

([4]5) The [Superintendent] head of the procurement unit shall comply with all applicable laws and rules in the conduct of small purchases for professional services, including:

(a) Subsection 63G-6a-506(8);

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- (b) Title 63G, Chapter 6a, Part 24, Unlawful Conduct and Penalties; and
- (c) Sections R33-24-104 through R33-24-106.

**R277-122-7. Scoring of Proposals Against Evaluation Criteria Other Than Cost in the Request for Proposal Process.**

(1) The head of the procurement unit shall score proposals against evaluation criteria other than cost in the request for proposal process to:

(a) determine which proposals meet mandatory minimum requirements or minimum score thresholds set forth in a request for proposal; and

(b) assist the head of the procurement unit in selecting the proposal that provides the best value or is the most advantageous to the Board.

(2) The head of the procurement unit shall award points for each applicable evaluation criteria set forth in a request for proposal.

(3) The head of the procurement unit shall evaluate request for proposals based on a ten-point scale consisting of all whole numbers from zero to ten, with scores adhering to the following benchmarks:

(a) Ten points: the proposed solution measurably exceeds requirements and expectations as described in the request for proposal;

(b) Five points: the proposed solution satisfactorily meets requirements and expectations as described in the request for proposal; and

(c) Zero points: the proposed solution does not meet requirements and expectations as described in the request for proposal.

(4) The head of the procurement unit may use an alternative scoring scale if approved in writing by the head of the procurement unit.

**R277-122-8. Multiple Category Request for Proposals Process Resulting in a Single Award.**

(1) In accordance with Section 63G-6a-710, the head of the procurement unit may conduct a multiple stage process as a multiple category request for proposals process

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resulting in a single contract award.

(2) The head of the procurement unit may use a multiple category request for proposals process when proposals are accepted in more than one category of solution, and the category of solution providing the best value to the Board is not determined until the final stage of the multiple stage process.

(3) When conducting a multiple category request for proposals process, the head of the procurement unit shall:

(a) comply with all requirements set forth in Title 63G, Chapter 6a, Part 7, Requests for Proposals;

(b) allow offerors to submit proposals in more than one category; and

(c) include in the request for proposals:

(i) the subjective and objective criteria that will be used to evaluate proposals in each category of solution;

(ii) the minimum score thresholds required to advance to subsequent stages of the multiple stage process;

(iii) the method of identifying the best value proposal in each category of solution;  
and

(iv) the method of identifying the best value category of solution in the final stage of the multiple stage process.

(4) Categories in a multiple category request for proposals may consist of:

(a) different types of solutions addressing the same need;

(b) a base solution and its variants, including add alternates building upon the base solution; or

(c) any other category determined in writing by the head of the procurement unit to be appropriate for use in a multiple category request for proposals.

#### **R277-122-9. Cancellation Before Award.**

(1) A solicitation may be cancelled prior to a contract award if:

(a) the Board does not receive any responsive responses to the solicitation; or

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(b) the head of the procurement unit determines the cancellation is:

(i) in the best interest of the Board; and

(ii) supported by a reasonable and good faith justification.

(2) The head of the procurement unit shall include notice of the Board's right of cancellation described in Subsection (1) in each Board solicitation.

(3) A solicitation may be re-issued:

(a) with or without modification, if cancelled pursuant to Subsection (1)(a); or

(b) with modification, if cancelled pursuant to Subsection (1)(b).

#### **R277-122-10. Establishment of Terms and Conditions.**

The head of the procurement unit shall develop standard terms and conditions for use with Board contracts and agreements.

#### **R277-122-11. Requirements for Cost or Pricing Data.**

(1) If cost or pricing data is required by Section 63G-6a-1206 or Section R33-12-601, the head of the procurement unit shall require the person who seeks a cost-based contract to submit:

(a) factual and verifiable information related to the contractor's estimated cost for completing a project on:

(i) the date the contract is signed by both parties; or

(ii) an earlier date agreed to by both parties that is:

(A) as close as practicable to the date described in Subsection (1)(a)(i); and

(B) before prudent buyers and sellers would reasonably expect price negotiations to be affected significantly; and

(b) underlying data related to a contractor's estimate that can be reasonably expected to contribute to the soundness of estimates of future costs and the validity of determinations of costs already incurred, including:

(i) vendor quotations;

(ii) nonrecurring costs;

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(iii) information on changes in production methods and in production or purchasing volume;

(iv) data supporting projections of business prospects and objectives and related operations costs;

(v) unit-cost trends such as those associated with labor efficiency;

(vi) make-or-buy decisions;

(vii) estimated resources to attain business goals; or

(viii) information on management decisions that could have a significant bearing on costs.

(2) Submission of certified cost or pricing data applies to contracts of \$50,000.00 or greater if the contract price is not established by:

(a) adequate price competition;

(b) established catalogue or market prices; or

(c) law or regulation.

### **R277-122-12. Use of Federal Cost Principles.**

The head of the procurement unit shall apply the federal cost principles described in 2 CFR Part 200, Subpart E in determining which costs expended under Board contracts are reasonable, allocable, and allowable.

### **R277-122-13. Grounds for Protest - Intervention in a Protest.**

(1) A bidder who files a protest shall include in the bidder's submission a concise statement of the grounds for the protest, which shall include the facts leading the protestor to contend that a grievance has occurred, including but not limited to specifically referencing:

(a) the circumstances described in Subsections R33-16-101a(2)(a) (i) through (iii);

(b) a provision of the solicitation alleged to be:

(i) unduly restrictive;

(ii) anticompetitive; or

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(iii) unlawful;

(c) an alleged material error made by the evaluation committee or conducting procurement unit; or

(d) the circumstances described in Subsections R33-16-101a(2)(a)(vi) and (vii).

(2) A motion to intervene in a post-award protest may only be made by the announced awardee.

(3) A person may intervene in a pre-award protest, if the person's proposal:

(a) was evaluated;

(b) found to be responsive; and

(c) the head of the procurement unit finds the person to be responsible.

#### **R277-122-14. Unsolicited Proposals.**

The head of the procurement unit may not consider an unsolicited proposal.

**KEY: procurement, efficiency**

**Date of Enactment or Last Substantive Amendment: April 9, 2018**

**Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53A-1-401; 63G, Chapter 6a**