

**Effective 5/9/2017**

**63G-6a-707 Evaluation of proposals -- Evaluation committee.**

- (1)
  - (a) To determine which proposal provides the best value to the procurement unit, the evaluation committee shall evaluate each responsible offeror's responsive proposal that has not been disqualified from consideration under the provisions of this chapter, using the criteria described in the request for proposals.
  - (b) The criteria in a request for proposals may include:
    - (i) experience;
    - (ii) performance ratings;
    - (iii) inspection;
    - (iv) testing;
    - (v) quality;
    - (vi) workmanship;
    - (vii) time, manner, or schedule of delivery;
    - (viii) references;
    - (ix) financial solvency;
    - (x) suitability for a particular purpose;
    - (xi) management plans;
    - (xii) cost;
    - (xiii) if applicable, the offeror's willingness and capability to enter into a public-private partnership; or
    - (xiv) other subjective or objective criteria specified in the request for proposals.
  - (c) The criteria in a request for proposals for a construction project shall include the existence and quality of:
    - (i) an offeror's company safety plan; and
    - (ii) the offeror's safety plan for the specific project that is the subject of the proposal.
- (2) Criteria not described in the request for proposals may not be used to evaluate a proposal.
- (3) The conducting procurement unit shall:
  - (a) appoint an evaluation committee consisting of at least three individuals with at least a general familiarity with or basic understanding of:
    - (i) the technical requirements relating to the type of procurement item that is the subject of the procurement; or
    - (ii) the need that the procurement item is intended to address; and
  - (b) ensure that the evaluation committee and each individual participating in the evaluation committee process:
    - (i) does not have a conflict of interest with any of the offerors;
    - (ii) can fairly evaluate each proposal;
    - (iii) does not contact or communicate with an offeror concerning the procurement outside the official evaluation committee process; and
    - (iv) conducts or participates in the evaluation in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.
- (4) A conducting procurement unit may authorize an evaluation committee to receive assistance:
  - (a) from an expert or consultant who:
    - (i) is not a member of the evaluation committee; and
    - (ii) does not participate in the evaluation scoring; and
  - (b) to better understand a technical issue involved in the procurement.
- (5)

- (a) An evaluation committee may, with the approval of the head of the conducting procurement unit, enter into discussions or conduct interviews with, or attend presentations by, the offerors, for the purpose of clarifying information contained in proposals.
  - (b) In a discussion, interview, or presentation under Subsection (5)(a), an offeror:
    - (i) may only explain, illustrate, or interpret the contents of the offeror's original proposal; and
    - (ii) may not:
      - (A) address criteria or specifications not contained in the offeror's original proposal;
      - (B) correct a deficiency, inaccuracy, or mistake in a proposal that is not an immaterial error;
      - (C) correct an incomplete submission of documents that the solicitation required to be submitted with the proposal;
      - (D) correct a failure to submit a timely proposal;
      - (E) substitute or alter a required form or other document specified in the solicitation;
      - (F) remedy a cause for an offeror being considered to be not responsible or a proposal not responsive; or
      - (G) correct a defect or inadequacy resulting in a determination that an offeror does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds established in the solicitation.
- (6)
- (a) Except as provided in Subsection (7)(b) relating to access to management fee information, and except as provided in Subsection (9), each member of the evaluation committee is prohibited from knowing, or having access to, any information relating to the cost, or the scoring of the cost, of a proposal until after the evaluation committee submits its final recommended scores on all other criteria to the issuing procurement unit.
  - (b) The issuing procurement unit shall:
    - (i) if applicable, assign an individual who is not a member of the evaluation committee to calculate scores for cost based on the applicable scoring formula, weighting, and other scoring procedures contained in the request for proposals;
    - (ii) review the evaluation committee's scores and correct any errors, scoring inconsistencies, and reported noncompliance with this chapter;
    - (iii) add the scores calculated for cost, if applicable, to the evaluation committee's final recommended scores on criteria other than cost to derive the total combined score for each responsive proposal from a responsible offeror; and
    - (iv) provide to the evaluation committee the total combined score calculated for each responsive proposal from a responsible offeror, including any applicable cost formula, weighting, and scoring procedures used to calculate the total combined scores.
  - (c) The evaluation committee may not:
    - (i) change its final recommended scores described in Subsection (6)(a) after the evaluation committee has submitted those scores to the issuing procurement unit; or
    - (ii) change cost scores calculated by the issuing procurement unit.
- (7)
- (a) As used in this Subsection (7), "management fee" includes only the following fees of the construction manager/general contractor:
    - (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 construction manager/general contractor for a construction project, the evaluation committee:

- (i) may score a construction manager/general contractor 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 fee proposed by the offerors; and
  - (iv) except as provided in Subsection (9), 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 to the issuing procurement unit.
- (8)
- (a) The deliberations of an evaluation committee may be held in private.
  - (b) If the evaluation committee is a public body, as defined in Section 52-4-103, the evaluation committee shall comply with Section 52-4-205 in closing a meeting for its deliberations.
- (9) An issuing procurement unit is not required to comply with Subsection (6) or (7)(b)(iv), as applicable, if the head of the issuing procurement unit or a person designated by rule made by the applicable rulemaking authority:
- (a) signs a written statement:
    - (i) indicating that, due to the nature of the proposal or other circumstances, it is in the best interest of the procurement unit to waive compliance with Subsection (6) or (7)(b)(iv), as the case may be; and
    - (ii) describing the nature of the proposal and the other circumstances relied upon to waive compliance with Subsection (6) or (7)(b)(iv); and
  - (b) makes the written statement available to the public, upon request.

Amended by Chapter 154, 2017 General Session

Amended by Chapter 348, 2017 General Session

Amended by Chapter 376, 2017 General Session