

**Effective 5/12/2020**

**63G-6a-410 Request for statement of qualifications -- Process.**

- (1)
  - (a) A procurement unit may use the process described in this section:
    - (i) as one of the stages of a multiple-stage standard procurement process; and
    - (ii) to identify qualified vendors to participate in other stages of the multiple-stage procurement process.
  - (b) A procurement unit shall use the process described in this section as part of the approved vendor list process, if the procurement unit intends to establish an approved vendor list.
- (2) A procurement unit may not:
  - (a) award a contract based solely on the process described in this section; or
  - (b) solicit costs, pricing, or rates or negotiate fees through the process described in this section.
- (3) The process of identifying qualified vendors in a multiple-stage standard procurement process or of establishing an approved vendor list under Section 63G-6a-507 is initiated by a procurement unit issuing a request for statement of qualifications.
- (4) A request for statement of qualifications in a multiple-stage standard procurement process shall include:
  - (a) a statement indicating that participation in other stages of the multiple-stage standard procurement process will be limited to qualified vendors;
  - (b) the minimum mandatory requirements, evaluation criteria, and applicable score thresholds that will be used to identify qualified vendors, including, as applicable:
    - (i) experience and work history;
    - (ii) management and staff requirements or standards;
    - (iii) licenses, certifications, and other qualifications;
    - (iv) performance ratings or references;
    - (v) financial stability; and
    - (vi) other information pertaining to vendor qualifications that the procurement official considers relevant or important; and
  - (c) the deadline by which a vendor is required to submit a statement of qualifications.
- (5) A request for statement of qualifications in an approved vendor list process under Section 63G-6a-507 shall include:
  - (a) a general description of, as applicable:
    - (i) the procurement item that the procurement unit seeks to acquire;
    - (ii) the type of project or scope or category of work that will be the subject of a procurement by the procurement unit;
    - (iii) the procurement process the procurement unit will use to acquire the procurement item; and
    - (iv) the type of vendor the procurement unit seeks to provide the procurement item;
  - (b) the minimum mandatory requirements, evaluation criteria, and applicable score thresholds that vendors are required to meet to be included on the approved vendor list;
  - (c) a statement indicating that the approved vendor list will include only responsible vendors that:
    - (i) submit a responsive statement of qualifications; and
    - (ii) meet the minimum mandatory requirements, evaluation criteria, and applicable score thresholds described in the request for statement of qualifications;
  - (d) a statement indicating that only vendors on the approved vendor list will be able to participate in the procurements identified in the request for statement of qualifications;
  - (e) a statement indicating whether the procurement unit will use a performance rating system for evaluating the performance of vendors on the approved vendor list, including whether a vendor on the approved vendor list may be disqualified and removed from the list;

- (f)
  - (i) a statement indicating whether the procurement unit uses a closed-ended approved vendor list, as defined in Section 63G-6a-507, or an open-ended approved vendor list, as defined in Section 63G-6a-507; and
  - (ii)
    - (A) if the procurement unit uses a closed-ended approved vendor list, the deadline by which a vendor is required to submit a statement of qualifications and a specified period of time after which the approved vendor list will expire; or
    - (B) if the procurement unit uses an open-ended approved vendor list, the deadline by which a vendor is required to submit a statement of qualifications to be considered for the initial approved vendor list, a schedule indicating when a vendor not on the initial approved vendor list may submit a statement of qualifications to be considered to be added to the approved vendor list, and the specified period of time after which a vendor is required to submit a new statement of qualifications for evaluation before the vendor's status as an approved vendor on the approved vendor list may be renewed; and
  - (g) a description of any other criteria or requirements specific to the procurement item or scope of work that is the subject of the procurement.
- (6) A procurement unit issuing a request for statement of qualifications shall publish the request as provided in Section 63G-6a-112.
- (7) After the deadline for submitting a statement of qualifications, the procurement official may allow a vendor to correct an immaterial error in a statement of qualifications, as provided in Section 63G-6a-114.
- (8)
  - (a) A conducting procurement unit may reject a statement of qualifications if the conducting procurement unit determines that:
    - (i) the vendor who submitted the statement of qualifications:
      - (A) is not responsible;
      - (B) is in violation of a provision of this chapter;
      - (C) has engaged in unethical conduct; or
      - (D) receives a performance rating below the satisfactory performance threshold specified in the request for statement of qualifications;
    - (ii) there has been a change in the vendor's circumstances after the vendor submits a statement of qualifications that, if the change had been known at the time the statement of qualifications was evaluated, would have caused the statement of qualifications not to have received a qualifying score; or
    - (iii) the statement of qualifications:
      - (A) is not responsive; or
      - (B) does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds stated in the request for statement of qualifications.
  - (b) A procurement unit that rejects a statement of qualifications under Subsection (8)(a) shall:
    - (i) make a written finding, stating the reasons for the rejection; and
    - (ii) provide a copy of the written finding to the vendor that submitted the rejected statement of qualifications.
- (9)
  - (a)
    - (i) After the issuance of a request for statement of qualifications, the conducting procurement unit shall appoint an evaluation committee consisting, subject to Subsection (9)(b), of at least three individuals with at least a general familiarity with or basic understanding of:

- (A) the technical requirements relating to the type of procurement item that is the subject of the request for statement of qualifications; or
- (B) the need that the procurement item is intended to address.
- (ii) The conducting procurement unit shall ensure that each member of an evaluation committee and each individual participating in the evaluation committee process:
  - (A) does not have a conflict of interest with any vendor that submits a statement of qualifications;
  - (B) can fairly evaluate each statement of qualifications;
  - (C) does not contact or communicate with a vendor concerning the evaluation process or procurement outside the official evaluation committee process; and
  - (D) conducts or participates in the evaluation in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.
- (b) A procurement unit may reduce the number of individuals appointed to an evaluation committee if the procurement official determines in writing that the evaluation criteria:
  - (i) consist of only objective criteria; and
  - (ii) do not include any subjective criterion that requires analysis, assessment, or deliberation.
- (c) A conducting procurement unit may authorize an evaluation committee to receive assistance:
  - (i) from an expert or consultant who:
    - (A) is not a member of the evaluation committee; and
    - (B) does not participate in the evaluation scoring; and
  - (ii) to better understand a technical issue involved in the procurement.
- (d) An evaluation committee appointed under this Subsection (9):
  - (i) shall evaluate and score statements of qualifications submitted in response to a request for statement of qualifications using the minimum mandatory requirements, evaluation criteria, and applicable score thresholds set forth in the request for statement of qualifications;
  - (ii) may not evaluate or score a statement of qualifications using criteria not included in the request for statement of qualifications; and
  - (iii) may, with the approval of the procurement official, enter into discussions or conduct interviews with or attend presentations by vendors, for the purpose of clarifying information contained in statements of qualifications.
- (e) In a discussion, interview, or presentation under Subsection (9)(c)(ii), a vendor:
  - (i) may only explain, illustrate, or interpret the contents of the vendor's original statement of qualifications; and
  - (ii) may not:
    - (A) address criteria or specifications not contained in the vendor's original statement of qualifications;
    - (B) correct a deficiency, inaccuracy, or mistake in a statement of qualifications that is not an immaterial error;
    - (C) correct an incomplete submission of documents that the request for statement of qualifications required to be submitted with the statement of qualifications;
    - (D) correct a failure to submit a timely statement of qualifications;
    - (E) substitute or alter a required form or other document specified in the statement of qualifications;
    - (F) remedy a cause for a vendor being considered to be not responsible or a statement of qualifications not responsive; or
    - (G) correct a defect or inadequacy resulting in a determination that a vendor does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds established in the statement of qualifications.

- (f) After the evaluation committee completes its evaluation and scoring of the statements of qualifications, the evaluation committee shall submit the statements of qualifications and evaluation scores to the procurement official for review and final determination of:
  - (i) qualified vendors, if the request for statement of qualifications process is used as one of the stages of a multiple-stage process; or
  - (ii) vendors to be included on an approved vendor list, if the request for statement of qualifications process is used as part of the approved vendor list process.
- (g) The issuing procurement unit shall review the evaluation committee's scores and correct any errors, scoring inconsistencies, and reported noncompliance with this chapter.
- (h)
  - (i) The deliberations of an evaluation committee under this Subsection (9) may be held in private.
  - (ii) 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.
- (10) A procurement unit may at any time request a vendor to clarify information contained in a statement of qualifications, as provided in Section 63G-6a-115.
- (11) A vendor may voluntarily withdraw a statement of qualifications at any time before a contract is awarded with respect to which the statement of qualifications was submitted.
- (12) If only one vendor meets the minimum qualifications, evaluation criteria, and applicable score thresholds set forth in the request for statement of qualifications that the procurement unit is using as part of an approved vendor list process, the conducting procurement unit may:
  - (a) cancel the request for statement of qualifications; or
  - (b) establish an approved vendor list that includes the one vendor if the procurement unit continues to try to identify more vendors to be included on the approved vendor list by:
    - (i) keeping the request for statement of qualifications open; or
    - (ii) immediately reissuing the request for statement of qualifications and repeating the process under this section.
- (13) If a conducting procurement unit cancels a request for statement of qualifications, the conducting procurement unit shall make available for public inspection a written justification for the cancellation.
- (14) After receiving and reviewing the statements of qualifications and evaluation scores submitted by the evaluation committee, the procurement official of the procurement unit using the request for statement of qualifications process under this section as one of the stages of a multiple-stage procurement process shall identify those vendors meeting the minimum mandatory requirements, evaluation criteria, and applicable score thresholds as qualified vendors who are allowed to participate in the remaining stages of the multiple-stage procurement process.
- (15) The rulemaking authority may make rules pertaining to the request for statement of qualifications and the process described in this section.

Amended by Chapter 257, 2020 General Session