

APPENDIX H

PUBLIC PRIVATE PARTNERSHIP PROCUREMENT PROCEDURES

PURPOSE

The purpose of these Procurement Procedures ("Procedures") is to establish procedures for the procurement of services for public private partnership ("P3") ventures by the Board of Regents of the University System of Georgia (the "BOR").

DIRECTIVES

Compliance with these Procedures is required. However, in the BOR's sole discretion, no proceeding under these Procedures will be voided because of a minor technical failure of compliance that the BOR determines does not harm the substantive rights of the BOR or any other party or otherwise adversely affects the integrity of the BOR's procurement process.

Section 1: Methods of Procurement

In general, the BOR will use the following types of solicitation documents for its P3 ventures:

1.1 Request for Quotations (RFQ)

A Request for Quotations ("RFQ") is a formal solicitation method that includes a well-defined specification or scope of work and usually contains all contractual terms and conditions. Bidder exceptions to any of the RFQ specifications may be used as a basis for disqualification. The RFQ solicits sealed price quotations or bids from prospective vendors and seeks to obtain price quotes from the lowest priced responsive and responsible bidder(s); provided, however, no contract award shall be made to the bidder with the lowest cost if the BOR determines the low cost bidder cannot perform the contract requirements.

The BOR may use an RFQ if the project lends itself to the creation of a clear and accurate Statement of Work and the objective of the solicitation is to identify a vendor who can provide the required specifications at the lowest possible cost.

1.2 Request of Proposal (RFP)

A Request for Proposals (RFP) is a formal solicitation method that seeks to leverage the creativity and knowledge of business organizations in order to

provide a solution to a procurement need. The RFP solicits technical and sealed price proposals from prospective vendors and seeks to obtain the "best value" for the State. The RFP method does not use the cost of the project as the single determining factor, but rather uses a combination of lowest cost plus best-proposed solution to determine the award.

The BOR may use an RFP where the objective of the solicitation is to identify a vendor who can offer the best possible solution to the procurement at the most reasonable cost.

1.3 Request for Information (RFI)

A Request for Information (RFI) is a quasi-formal method for soliciting information from vendors who have knowledge or information about an industry, product, or service. The RFI method is not intended to result in a contract award but is designed to allow for the collection of industry information that will then be used to determine if an RFQ or RFP solicitation method is appropriate.

1.4 Request for Qualified Concessionaires/Contractors (RFQC)

An RFQC is used in cases when the BOR is attempting to find offerors with the qualifications to produce the product or service desired. Each vendor is judged on its ability to meet or surpass the required qualifications set forth in the RFQC solicitation document. This form of solicitation may, but does not always, culminate in a contract award. This form of solicitation may be used a pre-requisite to determine eligibility to respond to a subsequent RFQ or RFP.

Section 2: Competitive Procurement

2.1 Policy Statement

Acquisitions, purchases, or solicitations made by the BOR related to P3 ventures shall be made through a competitive process involving sealed responses unless expressly exempted from by the Chancellor.

2.2 Public Notice

- (a) All competitive solicitations related to P3 ventures shall be posted on the BOR's P3 webpage located at www.usg.edu/p3 and, at the option of the BOR, may also be posted on the Georgia Procurement Registry.
- (b) The BOR, at its discretion, may elect to conduct additional public advertisement through a newspaper or other publication or in locations or publications that may be familiar with potential vendors for the goods or services needed.

- (c) Within one day of the contract award, the BOR shall post the Contract Award on the BOR's website.

2.3 Formal Sealed Bids

- (a) All procurements related to a BOR P3 project will be made by solicitation of sealed competitive bids or proposals. To solicit competitive sealed bids, the BOR will require the vendor to submit its bid in a sealed package. Faxed bids and emailed bids will not be considered sealed bids. Sealed bids shall not be opened until after the closing date and time of the applicable procurement.
- (b) Bid Evaluation and Award
 - (i) Evaluation of Bids. Evaluation and contract award will be as set out in the solicitation document.
 - (ii) Alternate Bids. Alternate bids may be considered for an award in the discretion of the BOR.

2.4 Competitive Sealed Responses and Proposals

All responses and proposals received by the closing date and time of the RFQC or RFP will be evaluated in accordance with the terms and conditions set forth in the RFQC or RFP. During the evaluation stage, the BOR may elect to request clarifications and/or, conduct one or more rounds of discussions or negotiations to solicit improvements to technical and/or cost proposals.

Section 3: Clarifications, Discussions and Negotiations

Clarifications, discussions, and negotiations may be conducted on any BOR P3 procurement in accordance with the following:

3.1 Clarifications

During the procurement process, the BOR may seek clarifications from any offeror at any time.

3.2 Discussions

The BOR may conduct discussions collectively or one-on-one with offerors who are deemed qualified based on criteria set forth in the solicitation document. The BOR may engage in one or more rounds of discussions for the whatever purpose determined by the BOR, including but not limited to (x) gaining a better understanding of an offeror's proposed solution; (y) communicating the BOR's needs or concerns; or (z) communicating revisions and/or best and final offers.

3.3 Negotiations

The BOR may conduct negotiations with offerors who are deemed qualified and reasonably susceptible for award based on criteria set forth in the solicitation document. The BOR may engage in one or more rounds of negotiations.

The BOR will identify which offerors shall participate in the negotiations in one of the following ways:

- (a) Identify in the solicitation document the methodology that will be used to identify offerors that may participate in negotiations. This may include, but is not necessarily limited to, a methodology that establishes a competitive range based on offerors' rankings following proposal evaluations.
- (b) Identify in an addendum to the solicitation document the methodology that will be used to identify offerors that may participate in Negotiations.
- (c) Negotiate with all responsive responsible offerors following bid/proposal evaluations.

The BOR may issue additional information and/or instructions to offerors participating in negotiations as needed. Negotiations may be completed after a single round, or may be done in several rounds as determined by the BOR's negotiation team.

After the negotiations, participating offerors may be asked to submit supplemental proposals defining the revisions that are a result of the negotiations. Any request for supplemental proposals will be directed in writing to all offerors participating in the negotiations, and will provide details concerning the format and due date for the supplemental proposals. The BOR may in its sole discretion terminate negotiations and/or the solicitation at any time.

3.4 Negotiations in Lieu of New Procurement

If after evaluation and obtaining clarification of a bid or proposal the BOR determines that a bid or proposal is unreasonable or unacceptable, or is noncompetitive, or the low bid or highest scoring proposal exceeds available funds, the BOR will determine in writing whether time or other circumstances will permit the delay required to re-solicit competitive bids or proposals. If the BOR determines that the circumstances are such that the procurement cannot be delayed, a contract may be negotiated provided that each responsible bidder or offeror who submitted a bid or proposal under the original solicitation is notified of the determination and is given a reasonable opportunity to negotiate.

In cases where the bid/proposals received are noncompetitive or the low bid or highest scoring proposal exceeds available funds, the negotiated prices shall be lower than the lowest rejected bid/proposal of any responsible bidder/offeror under the original solicitation.

Section 4: Miscellaneous

4.1 Right to Examine Records

The BOR shall have the right examine, inspect and audit the records of bidder/proposer pertaining to any contract with the BOR for a period of 3 years after the termination of the contract with the BOR.

4.2 Cancellation of Requests for Quotes, Requests for Qualified Contractors/Concessionaires, or Requests for Proposals

A RFQ, RFQC, or RFP or other solicitation may be canceled, or any or all responses may be rejected in whole or in part as may be specified in the solicitation and which is in the best interest of the BOR. Further, if at any time it is found that the integrity of the process has been compromised or that errors have occurred, the solicitation may be canceled.

4.3 Rejection of Bids/Proposals

The BOR reserves the right to reject any and all bids/proposals submitted in response to any solicitation document, to reject any portion thereof, or to waive any irregularity or administrative requirement.

Section 5: Protests

Any person or entity desiring to protest, challenge, or otherwise pursue a claim against any aspect of a BOR P3 procurement must comply with the attached BOR's Proposal Protest Procedure.

Section 6: Amendments

These Procedures may be amended, supplements, or cancelled at any time by the BOR. The BOR will publish notice of any such event on the BOR's P3 webpage located at www.usg.edu/p3.

**Board of Regents of the University System of Georgia
Proposal Protest Procedures for Public Private Partnership Procurements**

1.0 Right to Protest

This procedure (the “Procedure”) describes the mandatory administrative process by which vendor/bidders/offerors may challenge the solicitation and/or contract award of a concessionaire or other vendor in a public private partnership procurement for (a “Solicitation”).

Any actual or prospective vendor, bidder, offeror, or contractor who is aggrieved in connection with the Solicitation shall have the right to file a protest. All protests shall be filed in the manner set out this Procedure.

The Chancellor shall designate a procurement officer (the “Procurement Officer”) who shall be responsible for administering this Procedure.

2.0 Form of Protest and Filing Deadline

The protest must be in writing and signed by a company officer authorized to execute agreements on behalf of the protesting party or provided by an authorized legal representative of the protesting party. The protest must include the following information:

- Name, address, telephone number, and email address of the protestor;
- Identification of the solicitation by project name and project number;
- A concise statement of the reason(s) for the protest;
- Any supporting exhibits, evidence, or documents to substantiate the claim(s); and
- Desired remedy

The protest must be filed with the Procurement Officer of the Board of Regents via one of the following means:

Mail: Board of Regents of the University System of Georgia
 Office of Legal Affairs
 Attention: Procurement Officer
 270 Washington Street SW
 Atlanta, Georgia 30334

Hand Delivery: Board of Regents of the University System of Georgia
Office of Legal Affairs, Room 7035
Attention: Procurement Officer
270 Washington Street SW
Atlanta, Georgia 30334

Email: usg-legal@usg.edu

3.0 Filing Deadline

Protests concerning the solicitation process, including claims related to the specifications, requirements, submissions, and evaluation criteria, must be filed no later than 5:00 p.m. Eastern time three (3) business days prior to the due date for the responses to the Solicitation.

Protests concerning the selection of qualified offerors under the request for qualified offerors portion of the Solicitation must be filed no later than 5:00 p.m. Eastern time five (5) business days after the posting of the notice of selection by the Board of Regents. Protests concerning the selection of a concessionaire under the request for proposals portion of the Solicitation must be filed no later than 5:00 p.m. Eastern Time five (5) business days after the posting of the notice of award by the Board of Regents. The notice of selection and the notice of award will be posted at the Board of Regents' P3 webpage located at:

www.usg.edu/P3

A protest shall be deemed filed at the time it is actually received by the Board of Regents at either the physical address or email address set forth in Section 2.0. Any protest that is filed after these time periods shall be deemed invalid provided that the Procurement Officer, in his or her sole and absolute discretion, may allow the supplementation of a timely filed protest after the expiration of the time period filing protests.

4.0 Protest Evaluation by the Procurement Officer

The Procurement Officer shall evaluate and make the initial determination of validity of the protest.

The Procurement Officer shall issue a written directive posted on the Board of Regents' P3 webpage with a copy sent to the protestor regarding whether to suspend further action on the Solicitation or implementation of the contract pursuant to the Solicitation within five (5) business days of receipt of the protest. If the Procurement Officer is unable to adequately review the protest within five (5) business days, a time for completion of the review by the Procurement Officer shall be provided in writing to the protestor within five (5) business days of the receipt of the protest.

5.0 Exclusive Remedy

This Procedure provides the exclusive process for asserting a claim arising out of or relating to the Solicitation.

6.0 Hearing Procedures

Any party submitting a protest pursuant to this Procedure may request a hearing. All such requests shall be submitted to the Procurement Officer in writing included in the protest and shall set out the reasons why the party submitting the protest believes that the protest raises issues that would be best resolved by holding a hearing. The Procurement Officer may, on his or her motion, determine that a hearing should be held to resolve the protest. Should the Procurement Officer determine that the protest raises issues that would be best resolved by holding a hearing, the hearing shall be held within thirty (30) days following receipt of any request for a hearing. A notice that sets the time, date, and location of the hearing shall be mailed to the party or parties requesting the hearing at least seven (7) calendar days prior to the date of the hearing.

All hearings conducted under this Procedure will be conducted by the Procurement Officer or, at the sole discretion of the Procurement Officer, by a hearing officer designated by the Procurement Officer. The hearing officer's actions, decisions, and orders will be deemed to be on behalf of the Procurement Officer and effective as though taken by the Procurement Officer, subject to the appeals procedures as provided below.

In connection with the hearing, the Procurement Officer or the hearing officer, if applicable, may:

1. Conduct the hearing in an informal manner without formal rules or evidence or procedure;
2. Hold pre-hearing conferences to:
 - a. Settle, simplify, or identify the issues involved in the hearing; or
 - b. Consider other matters that may aid in expeditious disposition of the hearing;
3. Require each protesting party to state, orally and/or in writing, its position concerning the various issues involved in the hearing;
4. Require each protesting party to produce for examination those relevant witnesses and documents under its control;
5. Rule on motions and other procedural items pending before him or her, including, without limitation, the methods, scope, and extent of discovery available to the protesting party;
6. Regulate the course of the hearing and conduct of the participants, including the imposition of reasonable time limits;

7. Establish time limits for submission of motions or memoranda;
8. Take official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of judicial notice; and
9. Administer oaths or affirmations.

Any protesting party may request that the hearing be conducted before a court reporter. Such request must be in writing and include an agreement by the requesting party that it will procure at its own cost and on its own initiative the court reporting services for the hearing. To be a part of the record, the original transcript of the proceedings must be submitted to the Procurement Officer or the hearing officer as applicable as soon as the transcript is available but not later than ten (10) days after the conclusion of the hearing.

If the Procurement Officer conducts the hearing, he or she must render a decision in writing and send by mail, email, or hand delivery, a copies of the decision to the protesting parties within thirty (30) days after the conclusion of the hearing. If a hearing officer conducts the hearing, he or she must provided a proposed decision to the Procurement Officer within thirty (30) days after the conclusion of the hearing. If a proposed written decision from the hearing officer is received by the Procurement Officer, he or she must render a decision in writing and deliver copies of the decision to the protesting parties within thirty (30) days after receiving the proposed written decision from the hearing officer. The Procurement Officer may accept the proposed written decision in whole or in part or may reject the proposed written decision and enter his or her own decision.

If the Procurement Officer determines that the protest is valid, the Procurement Officer shall determine the appropriate remedy. Available remedies include but are not limited to the following:

- Modification of the Solicitation document and extension of the Solicitation period
- Cancellation of the Solicitation
- Cancellation of the selection or award or contract

The written decision of the Procurement Officer shall be sent by mail, email, or hand delivery to all protesting parties. Any party is presumed to have received such decision from the Procurement Officer no later than the third business day following the date of such decision was mailed to the last known address of such party.

7.0 Decision by Procurement Officer Without a Hearing

If the Procurement Officer determines that no hearing is required to resolve the protest, the Procurement Officer will render a decision in writing on the protest and send by mail, email, or hand delivery, a copies of the decision to the protesting parties within thirty (30) days of the filing of the protest.

If the Procurement Officer determines that the protest is valid, the Procurement Officer shall determine the appropriate remedy. Available remedies include but are not limited to the following:

- Modification of the Solicitation document and extension of the Solicitation period
- Cancellation of the Solicitation
- Cancellation of the selection or award or contract

The written decision of the Procurement Officer shall be sent by mail, email, or hand delivery to all protesting parties. Any party is presumed to have received such decision from the Procurement Officer no later than the third business day following the date of such decision was mailed to the last known address of such party.

8.0 Costs

In no event shall a protesting party be entitled to recover any costs incurred in connection with the protest of a solicitation or contract award, including but not limited to bid or proposal preparation costs, protest preparation costs, or attorneys' fees.

9.0 Appeal of the Decision of the Procurement Officer

The protestor may appeal a decision of the Procurement Officer. The protesting party shall file a written appeal with the Board of Regents Vice Chancellor of Fiscal Affairs after the Procurement Officer has issued a written decision and no later than five (5) business days after the receipt of the decision from the Procurement Officer. An appeal shall be deemed filed when it is actually received by the Board of Regents at one of the addresses set forth below. Any appeal filed after the time period shall be deemed invalid.

Any appeal filed with the Board of Regents Vice Chancellor of Fiscal Affairs shall be sent via any of the following means:

Mail: Board of Regents of the University System of Georgia
Office of Legal Affairs
Attention: Procurement Officer
270 Washington Street SW
Atlanta, Georgia 30334

Hand Delivery: Board of Regents of the University System of Georgia
Office of Legal Affairs, Room 7035
Attention: Procurement Officer
270 Washington Street SW
Atlanta, Georgia 30334

Email: usg-legal@usg.edu

The Vice Chancellor of Fiscal Affairs shall review the appeal. The Vice Chancellor of Fiscal Affairs or his or her designee may further investigate the claim and request additional information from the protestor or any source deemed helpful.

The Vice Chancellor of Fiscal Affairs shall issue a written determination either confirming or overturning the decision of the Procurement Officer within twenty (20) days after receipt of the appeal. The decision of the Vice Chancellor of Fiscal Affairs shall be the final decision of the Board of Regents.

10.0 Judicial Review

The final decision of the Board of Regents shall be subject to judicial review by and person or entity who was a party to the protest and the petition for certiorari seeking review must be filed with the Superior Court of Fulton County in accordance with Chapter 5 of Title 5 of the Official Code of Georgia and served on the Board of Regents within the time prescribed by Georgia law. The complete exhaustion of this Procedure is a prerequisite to the commencement of an action seeking review. In the absence of such complete exhaustion, any petition seeking review of the final decision shall be barred.