

## **MANAGED SERVICES PROVIDER PROJECT/SOW CONFLICTS OF INTEREST (COI) AND CONFIDENTIALITY**

Recruitment, evaluation, and selection of a resource through a Managed Services Provider should conform in all material respects to applicable procurement laws, including, as applicable, Part 5, Part 6, or Part 7 of the Utah Procurement Code. Where applicable, other provisions of the Utah Procurement Code and R33 of the Utah Administrative Code may be used for the resource selection process.

All State of Utah executive branch agencies that are subject to the State of Utah Division of Technology Services (DTS) must procure all IT through DTS pursuant to 63F-1-205. This "Secondary Process" is only required for Executive Branch Agencies.

Your designation as an evaluation committee member requires that you fully understand the policies regarding potential conflicts of interest and the confidential nature of the proposals or resumes and all that is contained therein. Under the Utah Administrative Code R33-124-101, "unlawful conduct shall be governed in accordance with the requirements set forth in Sections 63G-6a-2401 through 2407 [of the Utah Procurement Code]." Rule 33-124 of the Utah Administrative Code provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.

### **CONFIDENTIALITY.**

The competitive procurement process, governed by the Utah state law, requires that the State of Utah Division of Purchasing ensure fairness and equality in the competitive process. As an evaluation committee member, you will have access to confidential information about proposers or candidates that must only be used during the evaluation process and only in discussions with fellow evaluation committee members. You shall not disclose, share, or discuss the evaluation, scoring, or status of any proposal, candidate or business entity at any time before, during, or after the procurement process. You shall not use information obtained as an evaluation committee member for personal gain. You shall not copy or disseminate any portion of any proposal or resume at any time before, during, or after the procurement process.

### **CONFLICT OF INTEREST.**

A conflict of interest, or the appearance of one, may occur if you have direct or indirect connection with a vendor or organization that has submitted a proposal or candidate. Prior to reviewing any proposals or resumes, you must disclose any potential conflicts of interest to the State of Utah State of Utah Division of Purchasing Division of Technology Services Contracts Team. If during the review process, you become aware of a potential conflict of interest, you must immediately notify the State of Utah Division of Technology Services Contracts Team.

You may be disqualified as an evaluation committee member if your conduct creates the perception bias or unfair advantage, whether through director ties to a competitive proposer, potential proposer, subcontractor, or representative, or through indirect connections such as recreational activities or otherwise.

The Utah Administrative Code provides that a conflict of interest includes:

#### **R33-124-104. Socialization with Vendors and Contractors.**

- (1) A procurement professional may not:
  - (a) participate in social activities with vendors or contractors that will interfere with the proper performance of the procurement professional's duties;

- (b) participate in social activities with vendors or contractors that will lead to unreasonably frequent disqualification of the procurement professional from the procurement process; or
  - (c) participate in social activities with vendors or contractors that would appear to a reasonable person to undermine the procurement professional's independence, integrity, or impartiality.
- (2) If a procurement professional participates in a social activity prohibited under Subsection R33-124-104(1) or has a close personal relationship with a vendor or contractor, the procurement professional shall promptly notify their supervisor and the supervisor shall take the appropriate action, which may include removal of the procurement professional from the procurement or contract administration process that is affected

**R33-124-105. Financial Conflict of Interests Prohibited.**

- (1) A procurement conflict of interest occurs when the potential exists for an employee's personal financial interests, or for the personal financial interests of a family member, to influence, or have the appearance of influencing, the employee's judgment in the execution of the employee's duties and responsibilities when conducting a procurement or administering a contract.
- (2) To preserve the integrity of the state's procurement process, an executive branch employee may not take part in any procurement process, contracting or contract administration decision:
  - (a) relating to the employee or a family member of the employee; or
  - (b) relating to any entity in which the employee or a family member of the employee is an officer, director or partner, or in which the employee or a family member of the employee owns or controls 10% or more of the stock of such entity or holds or directly or indirectly controls an ownership interest of 10% or more in such entity.
- (3) If a procurement process, contracting, or contract administration matter arises relating to the employee or a family member of the employee, the employee must advise their supervisor of the relationship, and must be recused from any discussions or decisions relating to the procurement, contracting, or administration matter. The employee must also comply with the disclosure requirements in Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.

**R33-124-106. Personal Relationship, Favoritism, or Bias Participation Prohibitions.**

- (1) Employees are prohibited from participating in discussions or decisions relating to the procurement, contracting, or administration process if they have any type of personal relationship, favoritism, or bias that would appear to a reasonable person to influence their independence in performing their assigned duties and responsibilities relating to the procurement process, contracting, or contract administration or prevent them from fairly and objectively evaluating a proposal in response to a bid, Request for Proposal (RFP), or other solicitation. This provision may not be construed to prevent an employee from having a bias based on the employee's review of a response to the solicitation in regard to the criteria in the solicitation.
- (2) If an employee has a personal relationship, favoritism, or bias toward any individual, group, organization, or vendor responding to a bid, RFP, or other solicitation, the employee must make a written disclosure to the supervisor and the supervisor shall take appropriate action, which may include recusing the employee from discussions or decisions relating to the solicitation, contracting, or administration matter in question. This provision may not be construed to prevent an employee from having a bias based on the employee's review of a response to the solicitation in regard to the criteria in the solicitation.

### **R33-124-107. Professional Relationships and Social Acquaintances Not Prohibited.**

It is not a violation for an executive branch employee who participates in discussions or decisions relating to the procurement, contracting, or administration process to have a professional relationship or social acquaintance with a person, contractor or vendor responding to a solicitation, or that is under contract with the state, provided that there is compliance with:

- (1) Section R33-124-105;
- (2) Section R33-124-106, Utah Public Officers' and Employees' Ethics Act;
- (3) Executive Order EO/002/2014, Establishing an Ethics Policy for Executive Branch Agencies and Employees; and
- (4) other applicable state laws.

The Utah Procurement Code specifies for all evaluation committee members:

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

- (5) A procurement unit shall:
  - (a) appoint evaluation committee members who have 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.

To assure the integrity of the process, all evaluation committee members, including any paid consultants, are required to complete the Conflict of Interest and Confidentiality Statement.

## EVALUATOR CONFLICT OF INTEREST AND CONFIDENTIALITY STATEMENT

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I, \_\_\_\_\_,

I, \_\_\_\_\_,

I, \_\_\_\_\_,

I, \_\_\_\_\_,

I, \_\_\_\_\_,

Project/SOW Name: \_\_\_\_\_

As a member of the evaluation committee for a Managed Services Provider project/sow I will perform the evaluation under the guidelines, procedures and requirements provided by the State of Utah Division of Purchasing.

Further, I represent as follows:

1. I affirm, to the best of my knowledge, that I do not participate in social activities with vendors or contractors that could: (a) interfere with the proper performance of my duties; (b) lead to unreasonably frequent disqualification me from the procurement process; or (c) appear to a reasonable person to undermine my independence, integrity, or impartiality.
2. I affirm, to the best of my knowledge, that neither I or my family members have any financial interests with vendors or contractors that could influence, or appear to influence my judgment in the execution of my evaluation committee duties and responsibilities.
3. I affirm that I have not received any compensation from any employee, consultant, or anyone working for any vendor or contractor currently responding to a solicitation or holding a contract with the State of Utah or any of its entities.
4. I will not participate in any discussions or decisions relating to this Managed Services Provider project/sow, if I have any type of personal relationship, favoritism, or bias that would appear to a reasonable person to influence my independence in performing my assigned evaluation committee duties and responsibilities or prevent me from fairly and objectively evaluating a proposal.
5. I will conduct the evaluation in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.
6. I understand that all proposal information and details about the evaluation process are confidential and cannot be shared with anyone not involved in the evaluation. I agree not to discuss or share proposal or interview information with anyone outside the specified evaluation committee, the Managed Services Provider, and the State of Utah Division of Technology Services personnel until the evaluation and selection process is complete. I also agree not to disclose the committee's deliberations, selection basis, or any protected information during or after the evaluation process.

7. I have read and understand the applicable Utah Procurement Code and Utah Administrative Code rules and I understand that I am subject to the applicable rules of the Utah Procurement Code and Utah Administrative Code at all times during my assigned evaluation committee duties and responsibilities, and the subsequent administration of the awarded contract(s).

I have read this document and understand my obligations as explained herein. I understand further that I must immediately advise the State of Utah Division of Technology Services Contracts Team, in writing, whether a conflict currently exists or arises during my term of service as an evaluation committee member. I understand that I must sign and deliver this statement to the State of Utah Division of Technology Services Contracts Team prior to participating in the evaluation process.

Evaluator Signature: \_\_\_\_\_ Title: \_\_\_\_\_  
By signing, I certify that I am a full-time employee of the State of Utah, and not a third-party contractor.

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