



— Moving Utah Forward —

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PROCUREMENT

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Revision Table

Version	Effective Date	Revision Author	Summary of Revisions
1.1	May 4, 2023	Amy Brown Coffin	Updated to new template
2.0	November 21, 2022	Amy Brown Coffin	Defined Roles & Responsibilities to include segregation of duties; Removed Procurement to Meet Existing Needs as an independent procurement type; Added Conflict of Interest; Updated Purchasing Matrix; Added RFP Conflict of Interest and Confidentiality Exhibit
3.0		Amy Brown Coffin	Updated to new template; Updated Definitions and Roles & Responsibilities tables; Enhanced guidance for Competitive Sealed Bid process; Added additional options for RFI, RFSQ and Design Professional Services Purchasing; Added sections for Correcting Immaterial Errors, Clarifying Information, Evaluation Committee, Multiyear Contracts, Protest, Prohibited Conduct and Penalties; Removed Confidential Services as a purchase type and Competitive Sealed Proposal

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II. Purpose Statement

This policy sets forth the process to govern purchasing that benefits the Utah Inland Port Authority (UIPA) and complies with and helps fulfill stated statutory purposes.

III. Regulatory / Legislative Requirements

None

IV. Scope

This policy is designed to provide fair and equitable treatment of persons dealing with UIPA procurement, provide for the economical and efficient purchase of supplies and services for UIPA staff to follow.

V. References

- R33-24-104 Socialization with Vendors and Contractors
- R33-24-105 Financial Conflict of Interests Prohibited
- R33-24-106 Personal Relationship, Favoritism, or Bias Prohibitions
- R33-24-107 Professional Relationships and Social Acquaintances Not Prohibited
- UCA 52-4 Open and Public Meetings Act:
<https://le.utah.gov/xcode/Title52/Chapter4/52-4-S103.html>
- UCA 58-3a-102 Architects Licensing Act Definitions:
<https://le.utah.gov/xcode/Title58/Chapter3A/58-3a-S102.html>
- UCA 58-22-102 Professional Engineers and Professional Land Surveyors Licensing Act Definitions: <https://le.utah.gov/xcode/Title58/Chapter22/58-22-S102.html>
- UCA 58-86-102 State Certification of Commercial Interior Designers Act Definitions: <https://le.utah.gov/xcode/Title58/Chapter86/58-86-S102.html>
- UCA 63G-6a-712 Unsolicited Proposals:
<https://le.utah.gov/xcode/Title63G/Chapter6A/63G-6a-S712.html>
- UIPA BP-12 Segregation of Duties Policy
- UIPA BP-15 Code of Conduct Policy
- UIPA PO-14 Contracts Policy

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VI. Definitions

Term	Definition
Closed-end Approved Vendor List	An approved vendor list that is subject to: <ul style="list-style-type: none"> • a short period of time, specified by the procurement unit, during which vendors may be added to the list; and • a specified period of time after which the list will expire.
Constructive Knowledge	Knowledge or information that a protestor would have if the protestor had exercised reasonable care or diligence, regardless of whether the protestor actually has the knowledge or information and includes knowledge of: <ul style="list-style-type: none"> • applicable provisions of this policy; • instructions, criteria, deadlines, and requirements contained in the solicitation or in other documents made available to persons interested in the solicitation or provided in a mandatory pre-solicitation meeting; • relevant facts and evidence supporting the protest or leading the protestor to contend that the protestor has been aggrieved in connection with a procurement; • communications or actions, pertaining to the procurement, of all persons within the protestor's organization or under the supervision of the protestor; and • any other applicable information discoverable by the exercise of reasonable care or diligence.
Hearing	A proceeding in which evidence, which may include oral testimony, or argument relevant to a protest is presented to a protest officer in connection with the protest officer's determination of an issue of fact or law or both.
Open-ended Approved Vendor List	An approved vendor list that is subject to: <ul style="list-style-type: none"> • an indeterminate period of time during which vendors may be added to the list; • the addition of vendors to the list throughout the term of the list; and • a specified period of time after which the procurement unit is required to verify that vendors on the list continue to meet the minimum mandatory requirements, evaluation criteria, and applicable score thresholds.

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Procurement	The buying, purchasing, renting, leasing or otherwise acquiring of any supplies, services, or construction.
Protest Appeal Record	<ul style="list-style-type: none"> • a copy of the protest officer's written decision; • all documentation and other evidence the protest officer relied upon in reaching the protest officer's decision; • the recording of the hearing, if the protest officer held a hearing; • a copy of the protestor's written protest; and • all documentation and other evidence submitted by the protestor supporting the protest or the protestor's claim of standing.
Protestor	A person who files a protest
Request for Proposals (RFP)	All documents utilized for soliciting proposals including those which are attached or incorporated by reference.
Services	The furnishing of labor, time, or effort by any person, including professional services. These services do not include labor, effort, or work provided under an employment agreement.
Standing	<p>To have suffered an injury or harm or to be about to suffer imminent injury or harm, if:</p> <ul style="list-style-type: none"> • the cause of the injury or harm is: <ul style="list-style-type: none"> ○ an infringement of the protestor's own right and not the right of another person who is not a party to the procurement; ○ reasonably connected to the procurement unit's conduct; and ○ the sole reason the protestor is not considered, or is no longer considered, for an award of a contract under the procurement that is the subject of the protest; • a decision on the protest in favor of the protestor: <ul style="list-style-type: none"> ○ is likely to redress the injury or harm; and ○ would give the protestor a reasonable likelihood of being awarded a contract; and • the protestor has the legal authority to file the protest on behalf of the actual or prospective bidder or offeror or prospective contractor involved in the procurement that is the subject of the protest.

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Supplies	All property, including but not limited to goods, equipment, materials, printing, insurance, and leases of real property, excluding land or permanent interest in land.
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VII. Roles & Responsibilities

Role	Responsibility
Chief Risk & Compliance Officer	<ul style="list-style-type: none"> • Serve or designate a procurement official and protect officer ; • Review draft RFPs before posting; • Provide written approval for sole source procurements that includes rationale for sole source; • Establish and maintain appropriate RFP forms & templates; and • Ensure record retention of required purchasing and procurement documents
Chief Financial Officer	<ul style="list-style-type: none"> • Approve purchases after Executive Director; • Except for electronic devices, work with State of Utah; and Surplus Project program to sell, trade or dispose of surplus property belonging to UIPA
Evaluation Committee Reviewer	<ul style="list-style-type: none"> • Sign RFP Conflict of Interest & Confidentiality statement; • Review submissions and score each submission according to the criteria; • Submit completed scores to Solicitation Officer prior to the evaluation committee score review; • Provide written attestation of final scoring and recommendation; and • May not serve as Solicitation Officer for the solicitation that they are an evaluation committee reviewer
Executive Director	<ul style="list-style-type: none"> • Provide written approval for sole source procurements that includes rationale for sole source; • Signatory for all contracts; and • Approve contract extensions and changes if funding is within the approved annual budget amounts
Procurement Official	<ul style="list-style-type: none"> • Manage and supervise the procurement to ensure to the extent practicable that UIPA receives the best value;

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	<ul style="list-style-type: none"> • Prepare and issue standard specifications for procurement items; • Review contracts, coordinate contract compliance, conduct contract audits, and approve change orders; • Delegate duties and authority to an employee of the procurement unit, as the independent procurement unit's procurement official considers appropriate; • Coordinate with the CFO and Division of Technology Services with respect to the UIPA's procurement of information technology services; • Correct, amend, or cancel a procurement at any stage of the procurement process if the procurement is out of compliance with policy; • Attempt to resolve a contract dispute in coordination with the legal counsel; and • At any time during the term of a contract awarded by the UIPA, correct or amend a contract to bring it into compliance or cancel the contract: if the procurement official determines that correcting, amending, or canceling the contract is in the best interest of the procurement unit; and after consulting with, as applicable, the UIPA's legal counsel.
Protest Officer	<ul style="list-style-type: none"> • Record each hearing held on a protest; and • Preserve all records and other evidence relied upon in reaching the protest officer's written decision until the decision
Solicitation Officer	<ul style="list-style-type: none"> • Ensure that the solicitation process is adhered to; • Oversee evaluation committee; • Collect evaluation committee reviews; • Determine solicitation timelines; • issuance of solicitations, and the inspection (minimum mandatories), review, and acceptance of proposals • Post solicitations; • Respond to questions received during posting process; • Ensure the confidentiality of solicitation pricing: Review solicitation pricing, redact pricing for review committee members, distribute redacted bids to evaluation committee members, and enter pricing into final results;

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	<ul style="list-style-type: none"> • Receive and verify completed RFP Conflict of Interest and Confidentiality statements from evaluation committee members; • Convene meeting with all evaluation committee members to review and discuss scores; • Collect final scores from each evaluation committee member; and • May not serve as an evaluation committee reviewer for the solicitation they as solicitation officer
UIPA Board	<ul style="list-style-type: none"> • Approve large (> \$250,000) sole source contracts; • Approve major capital projects; • May serve as an evaluation committee member

VIII. Policy

This policy applies to the procurement of supplies and services. It shall apply to every expenditure of public funds by UIPA and to any public purchase irrespective of the source of the funds. If the procurement involves the expenditure of federal assistance or grant funds, the procurement shall be conducted in accordance with any mandatory applicable federal law and regulation and this policy. Nothing in this policy shall prevent UIPA from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law. All procurement types require a separation of duties so that the individual requesting and/or approving the purchase is not the same individual who is authorizing to sign for the good or service. All UIPA must comply with the UIPA Segregation of Duties and the UIPA Contracts Policy as it relates to procurement and acquisition or goods and services.

IX. Purchase Types

Minimal Purchases

Minimal Purchases are purchases having an aggregate total value with a single vendor of no more than \$5,000.00 annually within the fiscal year. So long as funds used for such purchases are part of the annual approved budget, UIPA staff may make a Minimal Purchase request without following any formal process set forth in this Policy.

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Notwithstanding this exception, the purchaser shall make a reasonable effort to identify and utilize the lowest responsible provider of the purchase.

Small Purchases

Small Purchases are purchases having an aggregate total value with a single vendor of no more than \$50,000.00 annually within the fiscal year. So long as funds are used for such purchases are part of the annual approved budget, UIPA staff may make a Small Purchase request so long as two or more competitive quotes are received.

State Cooperative Contract Purchasing

If available to UIPA because competitive procurement has already been completed, any item that is a State Cooperative Contract item may be purchased without following the Invitation for Bids or RFP requirements set forth in this Policy.

Government Agency Purchasing

When purchasing Supplies, material, or equipment from a vendor who has been awarded a bid from a local, state, or federal governmental entity within the preceding 90 days at the quoted price available for such items, UIPA need not follow any other bidding requirements.

Designated Professional Services

UIPA may procure Professional Services including but not limited to financial, legal, architects, engineers, accountants, physicians, and construction managers and other similar Professional Services. These Services may be procured via competitive sealed bid based on demonstrated competence and qualification at a fair and reasonable price.

Design Professional services

UIPA may procure Design Professional services, which are defined as:

- professional services within the scope of the practice of architecture as defined in Section UCA 58-3a-102;
- professional engineering as defined in UCA 58-22-102;
- master planning and programming services; or
- services within the scope of the practice of commercial interior design, as defined in UCA 58-86-102.

These Services may be procured via the Design Professional Services purchasing process.

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Concession Agreement

UIPA may engage with vendors for a concession agreement that gives the vendor the right to operate a specific business within UIPA owned or leased ground or property.

Contracting with Other Governmental Agencies

Where it is demonstrated that such services provide optimal value, UIPA may contract with a government agency through the use of an interlocal agreement without utilizing the formal procurement procedures set forth in this Policy.

Sole Source Procurement

Sole Source Procurement may arise when UIPA requires a Supply or Service of a unique or specialized nature, and to the best of the requester's knowledge and belief, based upon thorough research, only one known supplier is reasonably available to meet the need; or when specific parts, accessories, equipment, material, Services, proprietary items, or other items are necessary to meet UIPA's needs and there are no comparable items reasonably available; or items are procured for resale. Sole source procurement is not to be used to avoid competition.

UIPA may utilize sole source procurement in lieu of the formal procurement requirements set forth in this Policy when the Executive Director determines that its use is appropriate. This approval must be in writing and stored with the Chief Risk & Compliance Officer.

Emergencies, Public Threats, and Unforeseen Conditions

Generally, and notwithstanding any other provision of this Policy, an Executive Team member may make emergency procurement of Supplies or Services where there exists a threat to public health, welfare, safety or when an unforeseen condition exists that requires procurement to preserve life or safety.

X. Methods and Procedures for Procurement

These methods are outlined in [Purchasing Matrix in Exhibit A](#).

Competitive Sealed Bidding

All UIPA purchases shall be awarded by use of competitive sealed bidding except as otherwise provided by this Policy (e.g., see the [Purchasing Matrix in Exhibit A](#)). UIPA may

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utilize State Purchasing, including the submission portal when soliciting bids. Each solicitation will have its own evaluation criteria.

Invitation for Bids

Each competitive sealed bid shall be commenced by the Solicitation Officer issuing an Invitation for Bids which shall include:

- a description of the procurement item that the procurement unit seeks;
- instructions for submitting a bid, including the deadline for submitting a bid;
- the objective criteria that the procurement unit will use to evaluate bids;
- information about the time and manner of opening bids; and
- terms and conditions that the procurement unit intends to include in a contract resulting from the bidding process.

Public Notice

All noticing shall be handled by the Solicitation Officer in conjunction with State Purchasing. Adequate public notice shall be given for a reasonable time and not less than seven (7) Business Days prior to the date set forth for an opening of bids.

Processing of Bids

UIPA:

- shall accept bids as provided in the invitation for bids; and
- may not open a bid until after the deadline for submitting bids.

A person who submits a bid may not, after the deadline for submitting bids, make a change to the bid if the change is prejudicial to:

- the interest of the procurement unit; or
- fair competition.

Bid Opening

All bids shall be accepted and opened by the Solicitation Officer. Bids shall be publicly opened in the presence of one or more witnesses.

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Evaluation

UIPA will follow the [Evaluation Committee](#) section for evaluations.

UIPA shall evaluate bids:

- using the objective criteria described in the invitation for bids; and
- to achieve the greatest long-term value to the state and the procurement unit.

Award

The purchase shall be awarded with reasonable promptness by written notice to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the invitation of bids. Special interest groups should be limited to non-scoring committee members.

Cancellation of Invitation of Bids

An invitation for bids may be canceled by the Solicitation Officer in whole or in part when it is in the best interest of UIPA.

Request for Statement of Qualifications (RFSQ)

UIPA may use the RFSQ process:

- as one of the stages of a multiple-stage standard procurement process; and
- to identify qualified vendors to participate in other stages of the multiple-stage procurement process.

UIPA 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.

A procurement unit may not:

- award a contract based solely on the process described in this section; or
- solicit costs, pricing, or rates or negotiate fees through the process described in this section.

The process of identifying qualified vendors in a multiple-stage standard procurement process or of establishing an approved vendor list is initiated by a procurement unit issuing a request for statement of qualifications.

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RFSQ Process

A request for statement of qualifications in a multiple-stage standard procurement process shall include:

1. a statement indicating that participation in other stages of the multiple-stage standard procurement process will be limited to qualified vendors;
2. the minimum mandatory requirements, evaluation criteria, and applicable score thresholds that will be used to identify qualified vendors, including, as applicable:
 - a. experience and work history;
 - b. management and staff requirements or standards;
 - c. licenses, certifications, and other qualifications;
 - d. performance ratings or references;
 - e. financial stability; and
 - f. other information pertaining to vendor qualifications that the procurement official considers relevant or important; and
3. the deadline by which a vendor is required to submit a statement of qualifications.

Approved Vendor List Procurement

A procurement unit may not establish an approved vendor list unless the procurement unit has first completed the statement of qualifications process.

UIPA may establish an approved vendor list for:

- a specific, fully defined procurement item; or
- a future procurement item that is not specifically and fully defined, if the request for statement of qualifications contains a general description of:
 - the procurement item; and
 - the type of vendor that the procurement unit seeks to provide the procurement item.

UPA may not award a contract to a vendor on an approved vendor list for a procurement item that is outside the scope of the general description of the procurement item contained in the request for statement of qualifications.

A request for statement of qualifications in an approved vendor list process under shall include:

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- a general description of, as applicable:
 - the procurement item that the procurement unit seeks to acquire;
 - the type of project or scope or category of work that will be the subject of a procurement by the procurement unit;
 - the procurement process the procurement unit will use to acquire the procurement item; and
 - the type of vendor the procurement unit seeks to provide the procurement item;
- the minimum mandatory requirements, evaluation criteria, and applicable score thresholds that vendors are required to meet to be included on the approved vendor list;
- a statement indicating that the approved vendor list will include only responsible vendors that:
 - submit a responsive statement of qualifications; and
 - meet the minimum mandatory requirements, evaluation criteria, and applicable score thresholds described in the request for statement of qualifications;
- 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;
- a statement indicating whether the UIPA 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;
- a statement indicating whether the UIPA uses a closed-ended approved vendor list or an open-ended approved vendor list; and
 - 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
 - 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

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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

- a description of any other criteria or requirements specific to the procurement item or scope of work that is the subject of the procurement.

Public Notice

All noticing shall be handled by the Solicitation Officer in conjunction with State Purchasing. Adequate public notice shall be given for a reasonable time and not less than seven (7) Business Days prior to the date set forth for RFSQ.

Corrections

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 the [Correcting Immaterial Errors](#) section.

Rejections

UIPA may reject a statement of qualifications if the conducting procurement unit determines that:

- the vendor who submitted the statement of qualifications:
 - is not responsible;
 - is in violation of a provision of this section;
 - has engaged in unethical conduct; or
 - receives a performance rating below the satisfactory performance threshold specified in the request for statement of qualifications;
- 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
- the statement of qualifications:
 - is not responsive; or

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- does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds stated in the request for statement of qualifications.

If UIPA rejects a statement of qualifications, the Solicitation Officer shall:

- make a written finding, stating the reasons for the rejection; and
- provide a copy of the written finding to the vendor that submitted the rejected statement of qualifications.

Evaluation

After the issuance of a request for statement of qualifications, the UIPA shall appoint an evaluation committee according to the [Committee Composition](#) section of this policy.

An evaluation committee:

- 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;
- May not evaluate or score a statement of qualifications using criteria not included in the request for statement of qualifications; and
- 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.

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:

- qualified vendors, if the request for statement of qualifications process is used as one of the stages of a multiple-stage process; or
- 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.

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The issuing procurement unit shall review the evaluation committee's scores and correct any errors, scoring inconsistencies, and reported noncompliance with this chapter.

Deliberations

RSFQ deliberations will follow the [Deliberations](#) section with the Evaluation Committee.

Clarifications

A procurement unit may at any time request a vendor to clarify information contained in a statement of qualifications, as provided in the [Clarifying Information](#) section.

Voluntary Withdrawal

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.

Cancellation of an RFSQ

Cancellation of an RFSQ may be made by the Solicitation Officer in whole or in part when it is determined in the best interest of UIPA.

Qualified Vendors

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.

Design Professional Services Purchasing

UPA may procure design professional services shall:

- publicly announce all requirements for those services through a request for statement of qualifications, as provided in this part; and
- negotiate contracts for design professional services:

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- on the basis of demonstrated competence and qualification for the type of services required; and
- at fair and reasonable prices.

Criteria

UIPA may establish criteria in a request for statement of qualifications by which the qualifications of a design professional, as set forth in a statement of qualifications, will be evaluated, including:

- the design professional's work history and experience;
- performance ratings earned by the design professional or references for similar work;
- any quality assurance or quality control plan;
- the quality of the design professional's past work product;
- the time, manner of delivery, and schedule of delivery of the design professional services;
- the design professional's financial solvency;
- any management plan, including key personnel and subconsultants for the project; and
- other project specific criteria that the procurement unit establishes.

A request for statement of qualifications may not include a request for a price or a cost component for the design professional services.

Evaluation

After the issuance of a request for statement of qualifications, the UIPA shall appoint an evaluation committee according to the [Committee Composition](#) section of this policy.

An evaluation committee may enter into discussions or conduct interviews with, or attend presentations by, the design professionals whose statements of qualifications are under consideration.

An evaluation committee shall rank the top three highest scoring design professionals, in order of their scores, for the purpose of entering into fee negotiations.

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If fewer than three responsible design professionals submit statements of qualifications that are determined to be responsive, the procurement official shall issue a written determination explaining why it is in the best interest of the procurement unit to continue the fee negotiation and the contracting process with less than three design professionals.

Deliberations

Design Professional deliberations will follow the [Deliberations](#) section with the Evaluation Committee.

Determination of Compensation

The procurement officer shall award a contract to the qualified design professional whose statement of qualifications was awarded the highest score by the evaluation committee, at compensation that the procurement officer determines, in writing, to be fair and reasonable to the procurement unit.

In making the determination described in the paragraph above, the procurement officer shall take into account:

- the estimated value, scope, and professional nature of the services; and
- the complexity of the project or services.

If the procurement officer is unable to agree to a satisfactory contract with the highest scoring design professional, at a price the procurement officer determines to be fair and reasonable to the procurement unit, the procurement officer shall:

- formally terminate discussions with that design professional; and
- undertake discussions with the second highest scoring, qualified design professional.

If the procurement officer is unable to agree to a satisfactory contract with the second highest scoring design professional, at a price the procurement officer determines to be fair and reasonable to the procurement unit, the procurement officer shall:

- formally terminate discussions with that design professional; and

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- undertake discussions with the third highest scoring, qualified design professional.

If the procurement officer is unable to award a contract at a fair and reasonable price to any of the highest scoring design professionals, the procurement officer shall:

- select additional design professionals; and
- continue discussions in accordance with this part until an agreement is reached.

XI. Unsolicited Proposals

UIPA will follow 63G-6a-712 for unsolicited proposals.

XII. Request for Information (RFI)

UIPA may issue a request for information to obtain information, comments, or suggestions before issuing a solicitation. A request for information is not a procurement process and may not be used to: negotiate fees; make a purchase; determine whether a procurement may be made; or enter into a contract.

A response to a request for information is not an offer and may not be accepted to form a binding contract.

When UIPA receives pricing information in response to a request for information, the solicitation officer shall ensure that an individual who serves on an evaluation committee to evaluate proposals that include a proposal as to which the pricing information applies does not have access to the pricing information, except when the procurement official signs a written statement indicating why waiving the prohibition is in the best interests of the UIPA.

XIII. Correcting Immaterial Errors

UIPA may allow a vendor to correct an immaterial error in a responsive solicitation response as provided in this section.

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In the case that UIPA allows a vendor to correct an immaterial error in a responsive solicitation response shall:

- require the vendor to submit the correction in writing; and
- establish a deadline by which the vendor is required to correct the immaterial error.

A procurement unit may not allow a vendor to correct an immaterial error in a responsive solicitation response after the deadline.

XIV. Clarifying Information

UIPA may at any time make a written request to a vendor to:

- clarify information contained in a responsive solicitation response; or
- provide additional information that the procurement unit determines the procurement unit needs to determine whether the vendor is responsible.

When UIPA requests a vendor to clarify or provide additional information they shall establish a deadline by which the vendor is required to submit the clarifying or additional information. UIPA may not allow a vendor to submit clarifying or additional information after the deadline has passed.

XV. Evaluation Committee

Protocol

The evaluation committee shall evaluate proposals in accordance with the process described in the request for proposals.

To determine which proposal provides the best value to the UIPA, 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 evaluation criteria described in the request for proposals.

Criteria not described in the request for proposals may not be used to evaluate a proposal.

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Committee Composition

The UIPA shall appoint an evaluation committee of at least three members to evaluate proposals received in response to a request for proposals issued by the UIPA.

For each solicitation, the solicitation officer will:

- Appoint evaluation committee members who have at least a general familiarity with or basic understanding of:
 - the technical requirements relating to the type of procurement item that is the subject of the procurement; or
 - the need that the procurement item is intended to address; and
- ensure that the evaluation committee and each individual participating in the evaluation committee process:
 - does not have a conflict of interest with any of the offerors;
 - can fairly evaluate each proposal;
 - does not contact or communicate with an offeror concerning the procurement outside the official evaluation committee process; and
 - conducts or participates in the evaluation in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.

UIPA may authorize an evaluation committee to receive assistance from an expert or consultant to better understand a technical issue involved in the procurement.

Redacted Costs

Except as provided in the following paragraph, an evaluation committee member is prohibited from knowing or having access to information relating to the cost of a proposal until after the evaluation committee submits its recommendation to the procurement unit based on the scores of all criteria other than cost.

A procurement official may waive the prohibition of paragraph above by signing a written statement indicating why waiving the prohibition is in the best interests of the UIPA.

Deliberations

The deliberations and other proceedings of an evaluation committee may be held in private.

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If the evaluation committee is a public body, as defined in UCA Section 52-4-103, the evaluation committee shall comply with UCA Section 52-4-205 in closing a meeting for its deliberations and other proceedings.

Final Recommended Scores

An evaluation committee may not change its final recommended scores after the evaluation committee has submitted those scores to the procurement unit.

At the conclusion of the evaluation process, an evaluation committee shall prepare and submit to the procurement unit a written statement that:

- recommends a proposal for an award of a contract, if the evaluation committee decides to recommend a proposal;
- contains the score awarded to the recommended proposal based on the criteria stated in the request for proposals; and
- explains how the recommended proposal provides the best value to the procurement unit.

Award Exclusions

UIPA is not required to comply with above process for a contract with a construction manager/general contractor if the contract is awarded based solely on:

- the qualifications of the construction manager/general contractor; and
- the management fee to be paid to the construction manager/general contractor.

XVI. Multiyear Contracts

UIPA may enter into a multiyear contract resulting from an invitation for bids or a request for proposals, if:

- the procurement official determines, in the discretion of the procurement official, that entering into a multiyear contract is in the best interest of the procurement unit; and
- the invitation for bids or request for proposals:
 - states the term of the contract, including all possible renewals of the contract; and
 - states the conditions for renewal of the contract;

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In making the determination described above, the procurement official shall consider whether entering into a multiyear contract will:

- result in significant savings to the procurement unit, including:
- reduction of the administrative burden in procuring, negotiating, or administering contracts;
- continuity in operations of the procurement unit; or
- the ability to obtain a volume or term discount;
- encourage participation by a person who might not otherwise be willing or able to compete for a shorter term contract; or
- provide an incentive for a bidder or offeror to improve productivity through capital investment or better technology.

UIPA may not continue or renew a multiyear contract after the end of the multiyear contract term or the renewal periods described in the contract, unless the procurement unit engages in a new standard procurement process or complies with an exception, described in this chapter, to using a standard procurement process.

Exceptions

A multiyear contract, including any renewal periods, may not exceed a period of five years, unless:

- the procurement official determines, in writing, that:
 - a longer period is necessary in order to obtain the procurement item;
 - a longer period is customary for industry standards; or
 - a longer period is in the best interest of the procurement unit; and
- The written determination described in the above points are included in the file relating to the procurement.

Design or construction of a facility, real estate purchases, or a contract for the financing of equipment is excluded from the five-year limitation.

XVII. Board Approval

If the board specifically approves within the annual budget specific items for statutory requirements, related projects, and professional services, the UIPA will be able to proceed with obtaining goods and services. However, if a specific good or service is not

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approved with an annual or amended budget, then board approval will be needed. In addition, if the board approves a purchase, lease, sublease or sale of real property, the payment of real estate brokerage fees and leasing or other commissions in connection therewith is assumed and authorized without specific authorization in the board approval.

For purchases or contracts > 3 years in term or > \$250,000 cumulative value, the board must approve prior to any purchase.

XVIII. Protest

A protest may be filed with the protest officer by a person who:

- has standing; and
- is aggrieved in connection with a procurement or an award of a contract.

Protest Deadlines

A protest may not be filed after:

1. The opening of bids, for a protest relating to a procurement under a bidding process; or
2. The deadline for submitting responses to the solicitation, for a protest relating to another standard procurement process; or
3. The closing of the procurement stage that is the subject of the protest:
 - if the protest relates to a multiple-stage procurement; and
4. The day that is seven days after the day on which the person knows or first has constructive knowledge of the facts giving rise to the protest, if:
 - the protestor did not know and did not have constructive knowledge of the facts giving rise to the protest before:
 - the opening of bids, for a protest relating to a procurement under a bidding process;
 - the deadline for submitting responses to the solicitation, for a protest relating to another standard procurement process; or
 - the closing of the procurement stage that is the subject of the protest, if the protest relates to a multiple-stage procurement; or
 - the protest relates to a procurement process not described above.

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The deadline for filing a protest may not be modified.

Protest Filing

A protestor shall include in a protest:

- the protestor's mailing address and email address; and
- a concise statement of the facts and evidence:
- leading the protestor to claim that the protestor has been aggrieved in connection with a procurement and providing the grounds for the protestor's protest; and
- supporting the protestor's claim of standing.

Protest Considerations

A protest may not be considered unless it contains facts and evidence that, if true, would establish:

- a violation of this section or other applicable law;
- the procurement unit's failure to follow a provision of a solicitation;
- an error made by an evaluation committee or conducting procurement unit;
- a bias exercised by an evaluation committee or an individual committee member, excluding a bias that is a preference arising during the evaluation process because of how well a solicitation response meets criteria in the solicitation;
- a failure to correctly apply or calculate a scoring criterion; or
- that specifications in a solicitation are unduly restrictive or unduly anticompetitive.

A protest may not be based on:

- The rejection of a solicitation response due to a protestor's failure to attend or participate in a mandatory conference, meeting, or site visit held before the deadline for submitting a solicitation response;
- a vague or unsubstantiated allegation; or
- a person's claim that:
 - a procurement unit that complied with the public notice process within this policy did not provide individual notice of a solicitation to the person; or
 - the person received late notice of a solicitation for which notice was provided in accordance the public notice process within this policy.

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A protest may not include a request for:

- an explanation of the rationale or scoring of evaluation committee members;
- the disclosure of a protected record or protected information in addition to the information provided under the disclosure provisions of this section; or
- other information, documents, or explanations not explicitly provided for in this chapter.

A person who fails to file a protest within the time prescribed in the Protest Deadline may not:

- Protest to the protest officer a solicitation or award of a contract; or
- File an action or appeal challenging a solicitation or award of a contract before an appeals panel, a court, or any other forum.

XIX. Prohibited Conduct and Penalties

Prohibited Conduct

It is prohibited for a person who has or is seeking a contract with or a grant from the UIPA knowingly to give, or offer, promise, or pledge to give, a gratuity or kickback to:

- the UIPA;
- a UIPA procurement professional or contract administration professional; or
- an individual who the person knows is a family member of a UIPA procurement professional or contract administrator.

It is prohibited for a procurement professional or contract administration professional, or a family member of either, knowingly to receive or accept, offer or agree to receive or accept, or ask for a promise or pledge of, a gratuity or kickback from a person who has or is seeking a contract with or a grant from the UIPA.

It is prohibited for a person knowingly to divide a single procurement into multiple smaller procurements if dividing the single procurement:

- is done with the intent to avoid the use of a standard procurement process that would have otherwise been required if the procurement had not been divided;
- The single procurement would not have qualified as a small purchase;

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- One or more of the multiple smaller procurements qualify as a small purchase under this section; and
- the division is done with the intent to:
 - Avoid having to use a standard procurement process, other than the small purchase process, that the person would otherwise be required to use for the single procurement; or
 - Make one or more of the multiple smaller procurements fall below a small purchase expenditure threshold.

An individual is not in violation of prohibited conduct for receiving or accepting, offering or agreeing to receive or accept, or asking for a promise or pledge of a contribution on behalf of the UIPA, unless done with the intent that the UIPA, in exchange:

- award a contract or grant;
- make a procurement decision; or
- take an action relating to the administration of a contract or grant.

A person is not guilty of prohibited conduct for:

1. giving or offering, promising, or pledging to give a contribution to the UIPA, unless done with the intent to induce the UIPA, in exchange, to:
 - a. award a contract or grant;
 - b. make a procurement decision; or
 - c. take an action relating to the administration of a contract or grant; or
2. giving or offering, promising, or pledging to give something of value to an organization to which a procurement professional or contract administration professional belongs, unless done with the intent to induce the UIPA, in exchange, to:
 - a. award a contract or grant;
 - b. make a procurement decision; or
 - c. take an action relating to the administration of a contract or grant.

It is not prohibited for a person to give or receive, offer to give or receive, or promise or pledge to give or ask for a promise or pledge of, a hospitality gift, if:

- the total value of the hospitality gift is less than \$10; and
- the aggregate value of all hospitality gifts from the person to the recipient in a calendar year is less than \$50.

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Penalties

A person, who is found in violation of prohibited conduct, shall receive consequential action, including:

- Dismissal from employment or other disciplinary action;
- Requiring the individual to return the value of the prohibited gratuity or kickback; and
- Any other civil penalty provided by law.

XX. Conflict of Interest

Any UIPA staff member involved in the RFP process must abide by the UIPA Code of Conduct and disclose any conflicts of interest, including business opportunities and close relative or involvement with third parties.

A conflict of interest or the appearance of a conflict of interest may occur if an evaluation committee member or lead is directly or indirectly involved with an organization that has submitted a proposal for evaluation. Prior to reviewing any proposals, an evaluation committee member or solicitation officer must inform the UIPA Chief Risk & Compliance Officer of any potential conflicts of interest. If an evaluation committee member or solicitation officer becomes aware of any potential conflict of interest as he or she reviews a proposal, such person must immediately notify the UIPA Chief Risk & Compliance Officer. An evaluation committee member may be disqualified if they conduct themselves in a way that could create the appearance of bias or unfair advantage with or on behalf of any competitive proposer, potential proposer, agent, subcontractor, or other business entity, whether through direct association with contract representatives, indirect associations, through recreational activities or otherwise.

The UIPA will adhere to R33-24-14 Socialization with Vendors and Contractors, R33-24-105 Financial Conflicts of Interest Prohibited, R33-24-106 Personal Relationship, Favoritism, or Bias Participation Prohibition, and R33-24-107 Professional Relationships and Social Acquaintances Not Prohibited. In addition, all UIPA staff must adhere to the UIPA Code of Conduct and disclose any outside employment, outside board participation, employment of close relatives or involvement with third parties, business opportunities, outside investments or other financial investment in NW quadrant or port area projects, or conflicts of interest any time they arise.

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To assure the integrity of the solicitation process, all evaluation committee members, including any paid consultants, are required to complete the RFP Conflict of Interest/Confidentiality Statement (see [Exhibit B](#)).

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Exhibit A – Purchasing Matrix

TYPE OF PURCHASE	DOLLAR AMOUNT	POLICY REQUIREMENTS	INITIAL APPROVAL	SECONDARY APPROVAL
Minimal Purchase	Under \$5,000 annual fiscal year cumulative amount	<u>Minimal Purchase</u> <ul style="list-style-type: none"> Funds must be available Documents retained 	<ul style="list-style-type: none"> Executive Team Member (Excluding CFO) 	<ul style="list-style-type: none"> CFO
Small Purchase	\$5,000 or greater but less than \$50,000 annual fiscal year cumulative amount	<u>Small Purchase</u> <ul style="list-style-type: none"> Minimal of two competitive quotes that include minimum specifications Funds must be available Documents retained 	<ul style="list-style-type: none"> Executive Director 	<ul style="list-style-type: none"> CFO
Anything	\$50,000 or greater annual FY cumulative amount	<u>Competitive Sealed Bid</u> <ul style="list-style-type: none"> Bid proposal 7 days notification using State Purchasing system Notice arranged with State Purchasing > \$250,000 State Purchasing to oversee bidding process 	<ul style="list-style-type: none"> Executive Director > \$250,000 UIPA Board 	<ul style="list-style-type: none"> CFO
State Cooperative Contract	Any amount	This may be purchased without a bid process.	<ul style="list-style-type: none"> Executive Team Member (Excluding CFO) > \$5,000 Executive Director 	<ul style="list-style-type: none"> CFO

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Professional Services	Any amount	<p><u>\$0 to < \$50,000</u> Follow minimal purchase process</p> <p><u>> \$50,000</u> Procured using a competitive seal bid. These Services include lawyers, engineers, architects, auditors, real estate brokers and leasing agents, construction managers, etc. A limited evaluation of expertise and scope must be conducted, approved, and signed off by the Executive Director prior to the RFP being posted.</p>	<ul style="list-style-type: none"> ▪ Executive Director ▪ CFO
Design Professional Services	Any amount	<p><u>\$0 to < \$50,000</u> Follow minimal purchase process</p> <p><u>> \$50,000</u> Procured using a design professional services process</p>	<ul style="list-style-type: none"> ▪ Executive Director ▪ CFO
Ground or Property Leases	Any amount	Purchases or leases for ground or property	<ul style="list-style-type: none"> ▪ Executive Director ▪ UIPA Board ▪ CFO
Concession Agreements	Any amount	<p><u>Competitive Sealed Bid</u></p> <ul style="list-style-type: none"> ▪ Bid proposal ▪ 7 days notification using State Purchasing system ▪ Notice arranged with State Purchasing 	<ul style="list-style-type: none"> ▪ Executive Director ▪ CFO
Government Agency	Any amount	<p><u>≤ \$100,000</u> If another governmental entity (local, state, or federal) has awarded a contract to a vendor via a competitive bid process within the past 90 days and the vendor will give the same price, you may purchase without bid procedure.</p> <p><u>= or > \$100,000</u></p>	<ul style="list-style-type: none"> ▪ Executive Director ▪ CFO

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		Follow competitive sealed bidding process.		
Interlocal Agreements	Any amount	Purchases from other governmental entities. May be made without bid procedure at any level.	<ul style="list-style-type: none"> ▪ Executive Director 	<ul style="list-style-type: none"> ▪ CFO
Sole Source Purchasing	Any amount	May be made without bid procedure at any level. Must be approved in writing by the Executive Director and Chief Compliance Officer.	<ul style="list-style-type: none"> ▪ Chief Compliance Officer ▪ Executive Director > \$250,000 ▪ UIPA Board 	<ul style="list-style-type: none"> • CFO
Emergencies	Any amount	<p>Purchases of Supplies, Services, or construction during emergencies. May be made without bid procedure at any level but should ensure that the procurement is made with as much competition as reasonably practical.</p> <p>May not exceed 30 days contract term except for (a) natural disasters, which may be no longer than 60 days contract term or (b) emergency procurement for legal services.</p> <p>Provide publicly on UIPA's website within 14 days of the emergency procurement: a written document describing the specific emergency that necessitated the emergency procurement; the name of the highest ranking staff member that approved the emergency procurement; and each written contract related to the emergency procurement.</p>	<ul style="list-style-type: none"> ▪ Executive Team Member 	<ul style="list-style-type: none"> ▪ Separate Executive Team Member or Their Emergency Delegate

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Exhibit B – RFP Conflict of Interest and Confidentiality

Your willingness to participate as an RFP evaluation committee member is an integral part of the procurement process. The Utah Inland Port Authority (“UIPA”) truly appreciates your assistance and expertise.

Your designation as an RFP evaluation committee member requires that you fully understand the policies regarding potential conflicts of interest and the confidential nature of the proposals and all that is contained therein. Under the Utah Administrative Code R33-24-101, “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 33-24 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 and the policies of the UIPA ensures that the competitive process operates in a fair and equitable manner. As an RFP evaluation committee member, you may have access to information not generally available to the public and are charged with special professional and ethical responsibilities. This information may include information about proposers that is to be used only during the evaluation process, and for discussion only with fellow RFP evaluation committee members. You shall not communicate the evaluation, scoring, or status of any proposal or business entity at any time prior to, during, or after the procurement process. You shall not use such information obtained as an RFP evaluation committee member for either personal benefit, pecuniary or otherwise, or copy and/or disseminate any portion of any proposal at any time prior to, during, or after the procurement process.

Conflict of Interest

A conflict of interest or the appearance of a conflict of interest may occur if you are directly or indirectly involved with an organization that has submitted a proposal for evaluation. Prior to reviewing any proposals, you must inform the UIPA of any potential conflicts of interest. If you become aware of any potential conflict of interest as you review a proposal, you must immediately notify the UIPA. You may be disqualified as an RFP evaluation committee member if you conduct yourself in a way that could create the appearance of bias or unfair advantage with or on behalf of any competitive proposer, potential proposer, agent, subcontractor, or other business entity, whether through direct association with contract representatives, indirect associations, through recreational activities or otherwise.

As part of the UIPA Procurement Policy, a conflict of interest includes:

R33-24-104. Socialization with Vendors and Contractors.

(1) A procurement professional shall not:

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- (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 an executive branch procurement professional participates in a social activity prohibited under R33-24-104(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.

R33-24-105. Financial Conflict of Interests Prohibited.

- (1) A procurement conflict of interest is a situation in which the potential exists for an executive branch 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) In order 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 his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the procurement, contracting or administration matter. The employee must also comply with all disclosure requirements in Utah Code Title 67 Chapter 16, Utah Public Officers' and Employees' Ethics Act.

R33-24-106. Personal Relationship, Favoritism, or Bias Participation Prohibitions.

- (1) Executive branch employees are prohibited from participating in any and all 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

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to a bid, RFP or other solicitation. This provision shall 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 executive branch 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 any and all discussions or decisions relating to the solicitation, contracting or administration matter in question. This provision shall 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.

R33-24-107. Professional Relationships and Social Acquaintances Not Prohibited.

(1) 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 Rule R33-24-105, Rule R33-24-106, the Utah Public Officers' and Employees' Ethics Act, The Governor's Executive Order (EO 002 2014) "Establishing an Ethics Policy for Executive Branch Agencies and Employees," and other applicable State laws.

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

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RFP EVALUATOR CONFLICT OF INTEREST/CONFIDENTIALITY STATEMENT

I, _____, as a member of the RFP evaluation committee for Request for Proposal Utah Inland Port Authority **Insert RFP Name** will perform the evaluation under the guidelines, procedures and requirements provided by the UIPA.

Further, I represent as follows:

I, to the best of my knowledge, do not participate in social activities with vendors or contractors that: (a) will interfere with the proper performance of my duties; (b) will lead to unreasonably frequent disqualification of me from the procurement process; or (c) would appear to a reasonable person to undermine my independence, integrity, or impartiality.

I, to the best of my knowledge, do not have a conflict of interest with vendors or contractors in which the potential exists for my personal financial interests, or for the personal financial interests of a family member, to influence, or have the appearance of influencing my judgment in the execution of my evaluation committee duties and responsibilities.

I have not received any compensation from any employee, consultant, or anyone working for any vendor or contractor currently responding to a solicitation or who currently has a contract with the UIPA.

I will not participate in any discussions or decisions relating to this RFP, 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.

I will conduct the evaluation in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.

I understand that all information contained in the proposals and information regarding the evaluation process is protected and cannot be released or discussed in any manner with other offerors or individuals not involved in the evaluation process. I agree that I will not discuss or share any information provided in the proposals or interviews with anyone other than the selection committee members and the UIPA designated evaluation committee lead prior to the completion of the evaluation and selection process, and I will not discuss or disseminate the deliberations of the selection committee, the basis for the selection, or any information identified as protected.

I have read this document and understand my obligations as explained herein. I further understand that I must immediately advise the UIPA, in writing, if a conflict currently exists or arises during my term of service as an RFP evaluation committee member. I further understand that I must sign and deliver this statement to the UIPA Chief Risk & Compliance Officer prior to participating in the evaluation process.

Evaluator Signature: _____ Date: _____

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