

State Procurement Code Update & Procurement Ethics

May 7, 2013

State Procurement Code Update

- ▶ Utah Code Chapter 63G–6a
 - State law regarding procurement of goods and services applies to most government entities.
 - Definition–“Educational Procurement Unit” means:
 - (a) a school district;
 - (b) a public school, including a local school board or a charter school;
 - (c) Utah Schools for the Deaf and Blind;
 - (d) the Utah Education Network; or
 - (e) an institution of higher education of the state.

State Procurement Code Update

▶ Procurement Code History

- Enacted – 1978
- Last updated – Never
- Rewrite
 - Multi-year approach
 - 2012 General Session – SB 153 (effective 05/01/2013)
 - 2013 General Session – SB 190 (effective 05/01/2013)
 - 2014 General Session – Bill is anticipated

State Procurement Code Update

- ▶ Many new requirements have been created that the district must comply with.
- ▶ Almost all of the new requirements are handled by the Purchasing Department.
- ▶ Our current policy and administrative memorandum are already compliant.
- ▶ **Procurement ethics additions have potential to effect all employees and board members.**

Procurement Ethics

- ▶ **Effective May 1, 2013**
 - ▶ Gratuities—Kickbacks– Unlawful use of position or influence. ~ UCA 63G-6a-2304.5
 - ▶ Artificially dividing a purchase. ~UCA 63G-6a-2305 and 2306
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Procurement Ethics

- ▶ Why?
 - State audit of Department of Alcoholic Beverage Control

DABC audit reveals ethics breaches

By [Josh Loftin](#)
The Associated Press
Tue, 10/18/2011 - 8:03pm

SALT LAKE CITY -- Years of bid-rigging, manipulated contracts and unethical behavior by senior officials at Utah's liquor agency have resulted in incompetent management and hundreds of thousands of dollars in wasted money, according to a state audit released Tuesday.

Procurement Ethics

Gratuities—Kickbacks ~UCA 63G-6a-2304.5 (3) & (4)

- Offering a **gratuity** or **kickback**—unlawful for an **interested person** to give, offer, or promise to give a gratuity or kickback to a **procurement participant** or **contract administrator** or known **family member** of participant or administrator
- Accepting or asking for gratuity or kickback—unlawful for a procurement participant or contract administrator to ask for or receive a gratuity or kickback from an interested person for the benefit of the participant or administrator or for another person

Procurement Ethics

▶ Definitions

- “**Contract administrator**” means a person who administers a current contract, on behalf of a public entity, including:
 - making payments relating to the contract;
 - ensuring compliance with the contract;
 - auditing a contractor in relation to the contract;
 - or enforcing the contract.

Procurement Ethics

- “**Family member**” means a parent, stepparent, spouse, sibling, stepsibling, child, stepchild, grandparent, great-grandparent, grandchild, or great-grandchild.
 - “**Gratuity**” means anything of value including money, a loan with an interest rate lower than terms usually offered on the market, an award, employment, admission to an event, a meal, lodging, travel, or entertainment for which a charge is normally made.
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Procurement Ethics

- “Interested person” means a person who is interested in any way in the sale of a procurement item or insurance to a public entity.
- “Kickback” means a gratuity given exchange for favorable treatment in a pending procurement or the administration of a contract.

Procurement Ethics

- “**Procurement participant**” means a person involved in:
 - administering, conducting, or making decisions regarding a procurement process
 - making a recommendation regarding the award of a contract or regarding a decision to obtain a procurement item for a particular person;
 - evaluating a quote, a bid, or a response; or
 - awarding a contract or otherwise making a decision to obtain a procurement item for a particular person.

Procurement Ethics

- ▶ Exceptions ~UCA 63G-6a-2304.5 (6) & (7)
 - Not guilty if item is classified as **hospitality gift**
 - Contributions to the entity with no intent for reciprocation for the contribution

Procurement Ethics

▶ Definition

- “**Hospitality gift**” means a promotional or hospitality item, including, a pen, pencil, stationery, toy, pin, trinket, snack, nonalcoholic beverage, or appetizer
- “**Hospitality gift**” does not include money, a meal, a ticket, admittance to an event, entertainment for which a charge is normally made, travel, or lodging.
 - The total value of all hospitality gifts received by a procurement participant or contract administrator **in relation to a particular procurement or contract is less than \$10**; and
 - **The total value in one year less than \$50** from any one person, vendor, bidder, or contractor.

Procurement Ethics

- ▶ Gratuity or Kickback Penalties ~UCA 63G-6a-2304.5 (6) & 2306 (1)
 - Employees who intentionally violate shall be dismissed from employment and face penalty.
 - Elected officials may only be removed from office in accordance with the requirements of law relating to removal of the elected official from office.

Amount of Gratuity or Kickback	Penalty
> \$1,000	Felony of 2 nd Degree
\$250 to \$1,000	Felony of 3 rd Degree
\$100 to \$250	Class A Misdemeanor
< \$100	Class B Misdemeanor

Procurement Ethics

- ▶ Penalties for artificially dividing a purchase
~UCA 63G-6a-2305 & 2306 (1)
 - Employees who intentionally violate shall be dismissed from employment and face penalty.
 - Elected officials may only be removed from office in accordance with the requirements of law relating to removal of the elected official from office.

Amount of Divided Procurement	Penalty
> \$1,000,000	Felony of 2 nd Degree
\$250,000 to \$1,000,000	Felony of 3 rd Degree
\$100,000 to \$250,000	Class A Misdemeanor
< \$100,000	Class B Misdemeanor