

Procurement Appeals and Oversight: Procurement Violations and Offenses

CDD

Definitions—

These terms, used in this policy, are defined as follows:

1. “Contract administration professional” means an individual who is either directly under contract with the District or is employed by a person under contract with the District and who has responsibility in developing a solicitation or grant or in supervising or overseeing the administration or management of a contract or grant. This term does not include an employee of the District.
2. “Contribution” includes the following as applied to the District:
 - a. a voluntary gift or donation to the District for the District’s use, and not for a particular person employed by the District, including a philanthropic donation, services, money, or other items of value;
 - b. admission to a seminar, vendor fair, charitable event, fundraising event, or similar event that relates to the function of the District;
 - c. purchase of a booth at an event sponsored by the District or a group of which the District is a member; or
 - d. sponsorship of an event that is organized by the District.
3. “Gratuity” means anything of value given without anything provided in exchange or in excess of the market value of that which is provided in exchange, including:
 - a. a gift or favor;
 - b. money;
 - c. a loan at an interest rate below the market rate or with terms that are more advantageous to the borrower than terms offered generally on the market;
 - d. anything of value provided with an award other than a certificate, plaque, or trophy;
 - e. employment;
 - f. admission to an event;
 - g. a meal;
 - h. lodging;
 - i. travel;
 - j. entertainment for which a charge is normally made; and
 - k. a raffle, drawing for a prize, or lottery.

The term “gratuity” does not include:

- a. an item, including a meal in association with a training seminar, that is:
 - i. included in a contract or grant; or
 - ii. provided in the proper performance of a requirement of a contract or grant;
- b. an item requested to evaluate properly the award of a contract or grant;
- c. a rebate, coupon, discount, airline travel award, dividend, or other offering included in the price of a procurement item;
- d. a meal provided by an organization or association, including a professional or educational association, an association of vendors, or an

- association composed of public agencies or public entities, that does not, as an organization or association, respond to solicitations;
 - e. a product sample submitted to a public entity to assist the public entity to evaluate a solicitation;
 - f. a political campaign contribution;
 - g. an item generally available to the public; or
 - h. anything of value that one public agency provides to another public agency.
4. "Family member" means a father, mother, husband, wife, son, daughter, sister, brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.
 5. "Hospitality gift" means a token gift of minimal value, including, a pen, pencil, stationery, toy, pin, trinket, snack, beverage, or appetizer, given for promotional or hospitality purposes. It does not include money, a meal, admission to an event for which a charge is normally made, entertainment for which a charge is normally made, travel, or lodging.
 6. "Kickback" means a negotiated bribe provided in connection with a procurement or the administration of a contract or grant. It does not include anything which is listed in the exclusions from the definition of "gratuity," above.
 7. "Procurement" has the meaning set out in the scope section of Policy CB except that for purposes of this policy it also includes the awarding of a grant.
 8. "Procurement professional" means an employee of the District (not an independent contractor) who by title or primary responsibility:
 - a. has procurement decision making authority; and
 - b. is assigned to be engaged in, or is engaged in either:
 - i. the procurement process or
 - ii. the process of administering a contract or grant, including enforcing contract or grant compliance, approving contract or grant payments, or approving contract or grant change orders or amendments.

The term "procurement professional," as it applies to the District, does not include:

- a. members of the Board of Education
 - b. the superintendent, business administrator, a principal, a vice principal, or the chief assistant or deputy of the superintendent, business administrator, or of a principal or vice principal; or
 - c. any other individual who, by title or primary responsibility, does not have procurement decision making authority.
9. "Public agency" means the following entities and all officials, employees, and official representatives of the following entities:
 - a. a city, town, county, school district, local district, special service district, or other political subdivision of the state of Utah;
 - b. the state of Utah or any department, division, or agency of the state of Utah;
 - c. any agency of the United States;
 - d. any political subdivision or agency of another state or the District of Columbia, including any inter-local cooperation or joint powers agency formed under the authority of the laws of another state or the District of Columbia; and
 - e. any Indian tribe, band, nation, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Unlawful Conduct and Exceptions—

It is unlawful and a violation of this policy:

1. for a person who has or is seeking a contract with the District knowingly to give, or to offer, promise, or pledge to give, a gratuity or kickback to
 - a. the District;
 - b. a procurement professional or contract administration professional; or
 - c. an individual who the person knows is a family member of a procurement professional or contract administration professional.
2. 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 or grant from the District.

It is not unlawful for the District to give, offer, promise, or pledge to give a contribution to another public agency.

It is not unlawful or a violation of this policy for a person:

1. to give or offer, promise, or pledge to give a contribution to the District unless that is done with the intent to induce the District in exchange to (a) award a contract, (b) make a procurement decision, or (c) take an action relating to the administration of a contract or grant.
2. to give or offer, promise, or pledge to give something of value to an organization to which a procurement professional or contract administration professional belongs unless that is done with the intent to induce the District in exchange to (a) award a contract, (b) make a procurement decision, or (c) take an action relating to the administration of a contract or grant.
3. on behalf of the District, to receive or accept, offer or agree to receive or accept, or ask for a promise or pledge of a contribution unless done with the intent that the District in exchange (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 unlawful or a violation of this policy 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:

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

Voiding a Contract or Grant for Unlawful Conduct—

This section applies to procurements (a) for which public notice is provided on or after July 1, 2014, if public notice is required, or (b) where public notice is not required, the initial contact between the District and the potential contractor for purposes of the procurement occurs on or after July 1, 2014.

When a contract or grant has been awarded to a person who engages in conduct made unlawful by this policy or by Part 24 of the Procurement Code, “Unlawful Conduct and Penalties,” the Board of Education or the superintendent may, in their sole discretion, declare the contract or grant to be void and unenforceable except where (a) the contract or grant relates to the issuance of a bond or other obligation and the bond has been issued or obligation incurred; or (b) a third party has substantially changed its position in reliance upon the contract or grant.

Declaring a contract or grant void under this section does not affect the District’s obligation to pay for a contractor’s proper performance completed under the contract or grant or to pay for the value the contractor provides to the District under the contract or grant before the contract or grant is declared void.

Utah Code § 63G-6a-2405 (2014)

Prohibited Socialization by Procurement Professionals—

A procurement professional shall not:

1. participate in social activities with vendors or contractors that will interfere with the proper performance of the procurement professional’s duties.
2. participate in social activities with vendors or contractors that will lead to unreasonably frequent disqualification of the procurement professional from the procurement process; or
3. 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.

Utah Admin. Rules R33-24-104(1) (August 22, 2016)

Evaluation Committee Conflicts of Interest—

Nothing in this policy limits the District in requiring evaluation committee members to disclose conflicts of interests or in removing evaluation committee members for conflicts of interest.

Utah Code § 63G-6a-2406 (2014)

Required Reports Unlawful Conduct—

“Unlawful conduct” means:

1. conduct made unlawful by this policy or Part 24 of the Procurement Code, “Unlawful Conduct and Penalties or
2. conduct, including bid rigging, improperly steering a contract to a favored vendor, exercising undue influence on an individual involved in the procurement process, or participating in collusion or other anticompetitive practices, made unlawful under other applicable law.

A procurement professional with actual knowledge that a person has engaged in unlawful conduct shall report the unlawful conduct to the state auditor, the attorney general, or other appropriate prosecuting attorney. A procurement professional who fails to comply with this reporting requirement is subject to disciplinary action by the District as well as any other civil penalty provided by the Procurement Code. Persons other than procurement professionals with actual knowledge of unlawful conduct may report the unlawful conduct to the state auditor, the attorney general, or other appropriate prosecuting attorney.

Utah Code § 63G-6a-2407 (2017)