

## **Procurement Appeals and Oversight: Procurement Violations and Offenses**

### **Kickbacks and Improper Gratuities—**

#### *Definitions*

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

1. “Contract administrator” means a person who administers a current contract, on behalf of a public entity, including
  - a. making payments relating to the contract,
  - b. ensuring compliance with the contract,
  - c. auditing a contractor in relation to the contract, or
  - d. enforcing the contract.
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, including:
  - a. money;
  - b. a loan at an interest rate below the market rate or with terms that are more advantageous to the person receiving the loan than terms offered generally on the market;
  - c. an award;
  - d. employment;
  - e. admission to an event;
  - f. a meal;
  - g. lodging;
  - h. travel; or
  - i. entertainment for which a charge is normally made.
4. “Family member” means a parent, stepparent, spouse, sibling, stepsibling, child, stepchild, grandparent, great-grandparent, grandchild, or great-grandchild.

5. "Hospitality gift" means a promotional or hospitality item, including, a pen, pencil, stationery, toy, pin, trinket, snack, nonalcoholic beverage, or appetizer. It does not include money, a meal, a ticket, admittance to an event, entertainment for which a charge is normally made, travel, or lodging.
6. "Interested person" means a person who is interested in any way in the sale of a procurement item or insurance to a public entity.
7. "Kickback" means a gratuity given in exchange for favorable treatment in a pending procurement or the administration of a contract.
8. "Pending procurement" means a procurement at any stage, including:
  - a. preparing to engage in a standard procurement process, including preparing documents that will be used in that process;
  - b. engaging in a standard procurement process;
  - c. evaluating, or making a recommendation regarding, a quote, a bid, or a response; and
  - d. awarding a contract or otherwise making a decision to obtain a procurement item from a particular person.
9. "Procurement participant" means a person involved in:
  - a. administering, conducting, or making decisions regarding a standard procurement process;
  - b. making a recommendation regarding award of a contract or regarding a decision to obtain a procurement item for a particular person;
  - c. evaluating a quote, a bid, or a response; or
  - d. awarding a contract or otherwise making a decision to obtain a procurement item from a particular person.

*Utah Code § 63G-6a-2304.5(1) (2013)*

### *Gratuities are Prohibited*

It is unlawful and a violation of this policy

1. for an interested person to give, offer, or promise to give a gratuity to
  - a. a procurement participant or
  - b. an individual who the person knows is a family member of a procurement participant.
2. for a procurement participant to ask, receive, offer to receive, accept, or ask for a promise to receive a gratuity from an interested person.
3. for a contractor to give a gratuity to
  - a. a contract administrator of the contractor's contract or
  - b. an individual who the contractor knows is a family member of a contract administrator of the contractor's contract.

4. for a person who is a contract administrator of a contract to ask, receive, offer to receive, accept, or ask for a promise to receive, for the contract administrator or a family member of the contract administrator, a gratuity from the contractor for that contract.

A gratuity may be given without violating the law and this policy if it is a hospitality gift and as it relates to a procurement participant or a contract administrator:

1. the total value of all hospitality gifts given, offered, or promised to, or received or accepted by, the procurement participant or contract administrator in relation to a particular procurement or contract is less than \$10; and
2. the total value of all hospitality gifts given, offered, or promised to, or received or accepted by, the procurement participant or contract administrator from any one person, vendor, bidder, responder, or contractor in a calendar year is less than \$50.

*Utah Code § 63G-6a-2304.5(3), (6) (2013)*

### *Kickbacks are Prohibited*

It is unlawful and a violation of this policy:

1. for a person to give, offer, or promise to give a kickback to a procurement participant or to another person for the benefit of a procurement participant.
2. for a procurement participant to ask, receive, offer to receive, accept, or ask for a promise to receive a kickback for the procurement participant or for another person.
3. for a person to give a kickback to a contract administrator, or to another person for the benefit of a contract administrator.
4. for a contract administrator to ask, receive, offer to receive, accept, or ask for a promise to receive a kickback for the contract administrator or for another person.

*Utah Code § 63G-6a-2304.5(4) (2013)*

### *Improper Influence or Use of Position*

It is unlawful and a violation of this policy for a procurement participant to use his or her position or influence to obtain a personal benefit from an interested person, either for himself or herself or for a family member.

*Utah Code § 63G-6a-2304.5(5) (2013)*

### *Exception for Contributions*

As it relates to the District, it is not a violation of law or of this policy for a person to give, offer, or promise a contribution to the District unless that is done with the intent to induce a person to make a procurement decision, or to take action in relation to the administration of a contract, in reciprocation for the contribution.

As it relates to the District, it is not a violation of law or of this policy for a person to receive or accept a contribution on behalf of the District unless that is done in exchange for making a procurement decision, or for taking action in relation to the administration of a contract, in reciprocation for the contribution.

It is not a violation of law or of this policy for a person to give, offer, or make a pledge, in the form of a contribution to an organization to which a procurement participant or contract administrator belongs, unless the contribution is given, offered, or pledged with the intent to induce a person to make a procurement decision, or to take action in relation to the administration of a contract, in reciprocation for the contribution.

*Utah Code § 63G-6a-2304.5(7) (2013)*

### **Improper Small Purchases—**

It is unlawful and a violation of this policy for a person to intentionally or knowingly divide a procurement into one or more smaller procurements with the intent to make a procurement:

1. qualify as a small purchase, if, before dividing the procurement, it would not have qualified as a small purchase; or
2. meet a threshold regarding small purchases if, before dividing the procurement, it would not have met the threshold.

Examples of such violations include doing the following with the intent to cause a purchase to qualify as a small purchase or to fall below a small purchase threshold:

1. making two or more separate purchases;
2. dividing an invoice or purchase order into two or more invoices or purchase orders; or
3. making smaller purchases over a period of time.

*Utah Code § 63G-6a-408(8), (9) (2013)*

### **Required Reports to Attorney General—**

If the District or any employee or officer of the District has reason to believe that a person has violated the prohibitions on gratuities, kickbacks, or improper use of position, or has engaged in collusion or other anticompetitive practices relating to a procurement or a potential procurement, then the District shall transmit a notice of the relevant facts to the attorney general.

*Utah Code § 63G-6a-2302 (2013)*