



Ethics and Procurement

UTAH CODE, TITLE 67, CHAPTER 16

UTAH CODE, TITLE 63G, CHAPTER 6a

UTAH CODE, 76-8-105



Purpose

- Employ standards of conduct to ensure personal conflicts of interest do not influence decisions made by WSU employees
- Ensure fair and equitable treatment of all vendors and potential vendors in order to foster effective broad-based competition
- Foster faith and confidence in the integrity of WSU and its employees
- Make the best use of WSU resources and taxpayer money



Laws Pertaining to WSU Employees

- Utah State Bribery Statute
- Federal and State Anti-Trust Acts
- Utah Public Officers' and Employees' Ethics Act
 - Use of position for to further economic interest or special privileges or exemptions
 - Disclosure of Substantial Interest
 - Participation in Transaction Involving Business Where Individual Has an Interest
 - Conflict of Interest
 - Accepting Gift, Compensation, or Loan
- Utah Procurement Code
 - Gratuities – Kickbacks – Unlawful use of position or influence
 - Artificially dividing a purchase



Ethical Conduct

- Ethical conduct is a personal responsibility
- Each employee will be held accountable for his/her conduct
- There are criminal penalties for violation of these laws, up to 2nd degree felony, fines, prison
- In some cases the law also mandates termination from employment



Bottom Line:

- Do not use your position at WSU to obtain special privileges or economic gain *for yourself or others*
- Do not inappropriately share confidential information you have access to because of your job
- Avoid doing anything that would appear to unfairly influence a procurement decision



§67-16-4 Generally Prohibited Activity

- A WSU employee may not:
 - Disclose or improperly use WSU confidential information for personal economic gain or to secure special privileges or exemptions for self or others;
 - Accept other employment that could impair independence of judgment or ethical performance of public duties;
 - Use or attempt to use position to further substantially own economic interest or secure special privileges or exemptions for self or others.
 - Similar language in the procurement code



§67-16-5.3 Requiring donation, payment or service in exchange for approval

- WSU employee cannot demand as a condition for granting any application or other authorization that the person donate property, money or services to WSU, unless:
 - Donation is required by statute; or
 - Donation is mutually and voluntarily agreed to in writing between donor and WSU; or
 - It is part of a settlement agreement.



§67-16-6 Receiving compensation for assistance in transaction

- WSU employee cannot agree to receive outside compensation for assisting any person or business in a transaction unless the employee files a sworn written statement with:
 - Department chair and dean or analogous supervisors
 - Head of the company with which the transaction is being conducted
 - President
 - Office of Attorney General



§67-16-8 Participation In Transaction Involving Business Where Individual has an Interest

- WSU employee cannot participate in his/her official capacity or receive compensation for any transaction between WSU and any business entity in which the employee is an officer, director, employee or owns a substantial interest, unless the employee files a sworn written statement with:
 - Department chair and dean or analogous supervisors
 - Director of Purchasing (PPM 5-25h)
 - President
 - Office of Attorney General
- Substantial business interest: ownership, either legally or equitably, by an individual, the individual's spouse, or the individual's minor children, of at least 10% of the outstanding capital stock of a corporation or a 10% interest in any other business entity



§67-16-9 Personal investments

No WSU employee shall have personal investments in any business entity which will create a substantial conflict of interest between his or her private interests and his or her public duties.



Federal and State Antitrust Acts

- Every **contract, combination in the form of trust or otherwise, or conspiracy in the restraint of trade or commerce** is declared to be illegal.
- It is unlawful for any person to monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, any part of trade or commerce.
- Monopolize: Take action without a legitimate business purpose and with a specific intent of destroying competition or controlling prices to substantially lessen competition, or creating a monopoly, where there is a dangerous probability of creating a monopoly.



Per Se Violations of Antitrust Acts

- Price Fixing,
- Bid Rigging,
- Market Sharing, and
- Group Boycott



Potentially Anticompetitive Issues

- Sharing inside/confidential information with vendors
- Non-independent specifications
- Demonstrations

All can be handled during the competitive process with the Purchasing Department.



§76-8-105 Bribery Statute: What can you not take?

A person is guilty of receiving or soliciting a bribe if that person asks for, solicits, accepts, or receives, directly or indirectly,

any benefit



§76-8-105 Bribery Statute: When does it apply?

When it is with the understanding or agreement that the purpose or intent is to influence an action, decision, opinion, recommendation, judgment, vote, nomination, or exercise of discretion, of a public servant, party official, or voter.



§67-16-5 Ethics Act RE Gifts: What can you not take?

- It is an offense for a public officer or public employee to knowingly receive, accept, take, seek, or solicit, directly or indirectly for himself or another
 - a gift of substantial value or
 - a substantial economic benefit tantamount to a gift
 - Loans at an interest rate substantially lower than commercial rate
 - Compensation received for private services at a rate substantially higher than fair market value of service performed

Under one of three circumstances:



§67-16-5 Ethics Act RE Gifts: When does it apply?

- Where the gift would tend to improperly influence the employee to depart from the faithful and impartial discharge of his or her duties; or
- The employee knows or should know that the gift is for rewarding the employee for official action taken; or
- The employee has recently, is now, or will in the future be involved in governmental action directly affecting the donor or lender, unless proper disclosure is made of the gift



§67-16-5 Ethics Act RE Gifts: When does it not apply?

- WSU employee can potentially accept gifts under circumstances described above where the gift is:
 - An occasional non-cash item of \$50 value or less
 - An award publicly presented in recognition of public services
 - Any bona fide loan made in the ordinary course of business
 - A political campaign contribution



Hypothetical

It is your job to hire an office assistant for WSU. As you interview people, one person stays behind after the interview and says, "Hey, can I offer you a mint?"

Can you accept the mint?



Hypothetical

It is your job to hire an office assistant for WSU. As you interview people, one person stays behind after the interview and says, "Hey, my daughter works at Lagoon. Can I hook you up with season passes for you and your family?"

Can you accept the passes?



Procurement Code

- Rules governing receipt of a gratuity or using position to obtain a benefit from a potential vendor
- Rules governing artificially dividing a purchase



Procurement Code: What You Cannot Take

- Anything of value, including
 - money,
 - a loan at a better deal than market value,
 - an award,
 - employment,
 - admission to an event,
 - a meal,
 - lodging, travel,
 - or entertainment for which a charge is normally made
- For yourself or a family member
- From a person interested in selling to WSU or a current contractor



Procurement Code: When does it apply?

- Participating in a procurement, meaning:
 - Preparing, administering, conducting, or making decisions regarding a standard procurement process;
 - making a recommendation regarding 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 from a particular person;



Procurement Code: When does it apply?

- Acting as a contract administrator, 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 Code: What is acceptable?

- Promotional or hospitality items
 - Pen, pencil, stationery, toy, pin, trinket, snack, nonalcoholic beverage, appetizer; and
- Only where the total value of the item is
 - Less than \$10 per particular procurement or contract
 - Less than \$50 from any one person, vendor, bidder or contractor per calendar year



Procurement Code: What is acceptable?

- Contribution:
 - a voluntary gift or donation to WSU for WSU's use - **not for a particular person employed by WSU**
 - Philanthropic donation
 - Services
 - Money; or
 - Other items of value
 - Admission to a seminar, vendor fair, charitable event, or similar event that relates to the function of WSU;
 - Purchase of a booth at an event sponsored by WSU or a group of which WSU is a member;
 - Sponsorship of an event that is organized by WSU.
- But only so long as the contribution is not in exchange for making a procurement decision or for taking action in relation to the administration of a contract.**



Artificially Dividing a Purchase

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

- qualify as a small purchase, if, before dividing the procurement, it would not have qualified as a small purchase; or
- meet a threshold established by rule made by the applicable rulemaking authority, if, before dividing the procurement, it would not have met the threshold.



Artificially Dividing a Purchase

Such as:

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



Hypothetical

It is your job to purchase projectors for everyone in your department. You realize that the procurement for the total amount needed for the entire purchase would mean you have to engage in a competitive process. But you really feel that one company sells better projectors than any other.

Can you purchase a few projectors at a time over a period of time so that you can get your favorite projectors and not have to engage in a competitive process?



Hypothetical

You decide you need to go through a procurement process to purchase the projectors. You realize your friend Bob's company is a competitor in the process. His projectors are not the best, but you know he is going through some hard times and you'd like to help him out. During the procurement process, you run into Bob at a restaurant on your lunch break.

Can Bob pay for your lunch?



Hypothetical

You decide you need to go through a procurement process to purchase the projectors. You realize your friend Bob's company is a competitor in the process. His projectors are not the best, but you know he is going through some hard times and you'd like to help him out. During the procurement process, you run into Bob at a restaurant on your lunch break.

Can Bob pay for your appetizer?



Hypothetical

You decide you need to go through a procurement process to purchase the projectors. You realize your friend Bob's company is a competitor in the process. His projectors are not the best, but you know he is going through some hard times and you'd like to help him out. During the procurement process, you run into Bob at a restaurant on your lunch break.

***Should you even go to lunch with Bob?
Should you even be involved with this decision?***



Hypothetical

You decide you need to go through a procurement process to purchase the projectors. You realize your friend Bob's company is a competitor in the process. His projectors are not the best, but you know he is going through some hard times and you'd like to help him out. During the procurement process, you run into Bob at a restaurant on your lunch break.

Can you tell Bob that if he gives a donation to the University, he will get the contract?



Hypothetical

You decide you need to go through a procurement process to purchase the projectors. You realize your friend Bob's company is a competitor in the process. His projectors are not the best, but you know he is going through some hard times and you'd like to help him out. During the procurement process, you run into Bob at a restaurant on your lunch break.

Can you share with Bob information about the other vendors' pricing?



Hypothetical

You are through with the procurement process and ended up entering into a one year contract with a vendor who provides the best projectors at the best value to the University. This vendor has to come on campus at least once per week to provide service for the projectors under the contract. He brings donuts every time he comes.

Can you accept the donuts?



Hypothetical

You are through with the procurement process and ended up entering into a one year contract with a vendor who provides the best projectors at the best value to the University. This vendor has to come on campus at least once per week to provide service for the projectors under the contract. He wants to take you out to lunch sometime.

Can you accept the lunch?



Hypothetical

You are through with the procurement process and ended up entering into a one year contract with a vendor who provides the best projectors at the best value to the University. This vendor has to come on campus at least once per week to provide service for the projectors under the contract. At Christmas, he wants to give you a nice watch?

Can you accept the watch?



Way Forward to Compliance

- Submit a purchase requisition for all purchases over \$1,500 (internal p-card limit). Purchasing Department to make decisions about thresholds.
- Complete purchase requisition process **before** contacting or agreeing to purchase from a vendor.
- Demonstrations are part of the procurement process and should not be conducted without the involvement of the Purchasing Department.
- If at all possible, utilize State and University contracts
- Never accept a gratuity from a vendor if you are involved a procurement. If vendors offer to donate to the University, put them in contact with the Development Office.



- Anticipate the purchase of an e-procurement tool to simplify “on contract” shopping. No dollar limit and no p-card needed - fill your cart and away it goes.



Penalties for Violation

- Ethics Act:
 - Second degree felony if over \$1,000.00
 - Third degree felony if over \$250.00 but not more than \$1,000.00
 - Third degree felony if two prior convictions and \$250.00 or less
 - Class A misdemeanor more than \$100.00 but does not exceed \$250.00
 - Class B misdemeanor \$100.00 or less



Penalties for Violation

- Procurement Code – Gratuities:
 - a felony of the second degree if the total value of the gratuity or kickback is \$1,000 or more;
 - a felony of the third degree if the total value of the gratuity or kickback is \$250 or more, but less than \$1,000;
 - a class A misdemeanor if the total value of the gratuity or kickback is \$100 or more, but less than \$250; or
 - a class B misdemeanor if the total value of the gratuity or kickback is less than \$100.
- Termination from employment



Penalties for Violation

- Procurement Code – Artificially Dividing Purchase:
 - a felony of the second degree if the total value of the divided procurements is \$1,000,000 or more;
 - a felony of the third degree if the total value of the divided procurements is \$250,000 or more, but less than \$1,000,000;
 - a class A misdemeanor if the total value of the divided procurements is \$100,000 or more, but less than \$250,000; or
 - a class B misdemeanor if the total value of the divided procurements is less than \$100,000.



Penalties for Violation

- Bribery Statute:
 - a third degree felony when the value of the benefit asked for, solicited, accepted, or conferred is \$1,000 or less; and
 - a second degree felony when the value of the benefit asked for, solicited, accepted, or conferred exceeds \$1,000.

Utah Ethics Act Re: Gifts	Utah Procurement Code Re: Gratuities	Utah Bribery Statute
<p>Can Not Take:</p> <p>A gift of substantial value or</p> <p>A substantial economic benefit tantamount to a gift:</p> <ul style="list-style-type: none"> - Loans at an interest rate substantially lower than commercial rate - Compensation received for private services at a rate substantially higher than fair market value of service performed <p>Directly or indirectly, for self or another.</p> <p>When:</p> <ul style="list-style-type: none"> - Where the gift would tend to improperly influence the employee to depart from the faithful and impartial discharge of his or her duties; or - The employee knows or should know that the gift is for rewarding the employee for official action taken; or - The employee has recently, is now, or will be involved in governmental action directly affecting the donor or lender, unless proper disclosure is made of the gift. <p>Except:</p> <ul style="list-style-type: none"> - An occasional non-cash item of \$50 value or less - An award publicly presented in recognition of public services - Any bona fide loan made in the ordinary course of business - A political campaign contribution 	<p>Can Not Take:</p> <p>Gratuity: anything of value, including money, a loan at a better deal than market value, an award, employment, admission to an event, a meal, lodging, travel, or entertainment for which a charge is normally made. For self or family member.</p> <p>From person interested in selling to WSU or current contractor.</p> <p>When:</p> <p>Participating in a procurement, meaning: preparing, administering conducting, or making decisions regarding a standard procurement process;</p> <ul style="list-style-type: none"> - making a recommendation regarding 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 from a particular person; or <p>Acting as a contract administrator, including:</p> <ul style="list-style-type: none"> - making payments relating to the contract; - ensuring compliance with the contract; - auditing a contractor in relation to the contract; - enforcing the contract. <p>Except:</p> <p>Promotional or hospitality items, such as a pen, pencil, stationery, toy, pin, trinket, snack, nonalcoholic beverage, or appetizer, can be accepted in amounts where the total value of all the hospitality items given is less than \$10 for one procurement or contract or less than \$50 per vendor per calendar year.</p> <p>Donations made to the institution are excluded, unless the donation is made with the intent to influence a procurement decision.</p>	<p>Can Not Take:</p> <p>Any Benefit</p> <p>Directly or Indirectly</p> <p>When:</p> <p>It is with the understanding or agreement that the purpose or intent is to influence an action decision, opinion, recommendation, judgment, vote, nomination, or exercise of discretion of a public servant.</p> <p>WHEN IN DOUBT, DON'T TAKE IT</p> <p>There are criminal and/or civil penalties for each of these statutes, which can include prison, fines, and mandatory termination.</p>