

## **Part 24. Unlawful Conduct and Penalties**

**63G-6a-2401 This part is known as "Unlawful Conduct and Penalties."**

### **(1) "Contract administration professional":**

(a) means an individual who:

(i) is:

(A) directly under contract with a procurement unit; or

(B) employed by a person under contract with a procurement unit;

(ii) has responsibility in:

(A) developing a solicitation or grant, or conducting the procurement process; or

(B) supervising or overseeing the administration or management of a contract or grant; and

(b) does not include an employee of the procurement unit.

### **(2) "Contribution":**

(a) means a voluntary gift or donation of money, service, or anything else of value, to a public entity for the public entity's use and not for the primary use of an individual employed by the public entity; and

(b) includes:

(i) a philanthropic donation;

(ii) admission to a seminar, vendor fair, charitable event, fundraising event, or similar event that relates to the function of the public entity;

(iii) the purchase of a booth or other display space at an event sponsored by the public entity or a group of which the public entity is a member; and

(iv) the sponsorship of an event that is organized by the public entity.

**(5) "Gratuity":**

(a) means anything of value given:

- (i) without anything provided in exchange; or
- (ii) in excess of the market value of that which is provided in exchange;

3802 (b) includes:

- (i) a gift or favor;
- (ii) money;
- (iii) 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;
- (iv) anything of value provided with an award, other than a certificate, plaque, or trophy;
- (v) employment;
- (vi) admission to an event;
- (vii) a meal, lodging, or travel;
- (viii) entertainment for which a charge is normally made; and
- (ix) a raffle, drawing for a prize, or lottery; and

(c) does not include:

- (i) an item, including a meal in association with a training seminar, that is:
  - (A) included in a contract or grant; or
  - (B) provided in the proper performance of a requirement of a contract or grant;
- (ii) an item requested to evaluate properly the award of a contract or grant;
- (iii) a rebate, coupon, discount, airline travel award, dividend, or other offering included in the price of a procurement item;
- (iv) 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;
- (v) a product sample submitted to a public entity to assist the public entity to evaluate a solicitation;
- (vi) a political campaign contribution;
- (vii) an item generally available to the public; or

(viii) anything of value that one public agency provides to another public agency.

**(6) "Hospitality gift":**

(a) 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; and

(b) 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.

**(7) "Kickback":**

(a) means a negotiated bribe provided in connection with a procurement or the administration of a contract or grant; and

(b) does not include anything listed in Subsection (5)(c).

**(9) "Procurement professional":**

(a) means an individual who is an employee, and not an independent contractor, of a procurement unit, and who, by title or primary responsibility:

(i) has procurement decision making authority; and

(ii) is assigned to be engaged in, or is engaged in:

(A) the procurement process; or

(B) 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; and

(b) excludes:

(i) any individual who, by title or primary responsibility, does not have procurement decision making authority;

(ii) an individual holding an elective office;

(iii) a member of a governing body;

(iv) a chief executive of a public entity or a chief assistant or deputy of the chief executive, if the chief executive, chief assistant, or deputy, respectively, has a variety of duties and responsibilities beyond the management of the procurement process or the contract or grant administration process;

- (v) the superintendent, business administrator, principal, or vice principal of a school district or charter school, or the chief assistant or deputy of the superintendent, business administrator, principal, or vice principal;
- (vi) a university or college president, vice president, business administrator, or dean;
- (vii) a chief executive of a local district, as defined in Section 17B-1-102, a special service district, as defined in Section 17D-1-102, or a political subdivision created under Title 11, Chapter 13, Interlocal Cooperation Act;
- (viii) an employee of a public entity with:
  - (A) an annual budget of \$1,000,000 or less; or
  - (B) no more than four full-time employees; and
- (ix) an executive director or director of an executive branch procurement unit who:
  - (A) by title or primary responsibility, does not have procurement decision making authority; and
  - (B) is not assigned to engage in, and is not engaged in, the procurement process.

**63G-6a-2403. Applicability.**

- (1) This part applies to each public entity.
- (2) A procurement professional is subject to this part at all times during:
  - (a) the procurement process; and
  - (b) the administration of a contract or grant.
- (3) A contract administration professional is subject to this part at all times during the period the contract administration professional is:
  - (a) under contract with a procurement unit; and
  - (b) involved in:
    - (i) the procurement process; or
    - (ii) the administration of a contract or grant.
- (4) This part does not apply to:

(a) an individual described in Subsection 63G-6a-2402(9)(b); or

(b) any individual other than a procurement professional or contract administration professional.

(5) The other subsections of this section do not affect the applicability or effect of any other ethics, bribery, or other law.

**63G-6a-2404. Unlawful conduct -- Exceptions -- Classification of offenses.**

(1) (a) It is unlawful for a person who has or is seeking a contract with or a grant from a public entity knowingly to give, or offer, promise, or pledge to give, a gratuity or kickback to:

(i) the public entity;

(ii) a procurement professional or contract administration professional; or

(iii) an individual who the person knows is a family member of an individual described in Subsection (1)(a)(ii).

(b) It is not unlawful for a public agency to give, offer, promise, or pledge to give a contribution to another public agency.

(c) A person is not guilty of unlawful conduct under Subsection (1)(a) for:

(i) giving or offering, promising, or pledging to give a contribution to a public entity, unless done with the intent to induce the public entity, 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

(ii) 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 a public entity, 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.

(2) (a) It is unlawful 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 a public entity.

(b) An individual is not guilty of unlawful conduct under Subsection (2)(a) for receiving or accepting, offering or agreeing to receive or accept, or asking for a promise or pledge of a contribution on behalf of a public entity, unless done with the intent that the public entity, in exchange:

(i) award a contract or grant;

(ii) make a procurement decision; or

(iii) take an action relating to the administration of a contract or grant.

(3) Notwithstanding Subsections (1) and (2), it is not unlawful 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:

(a) the total value of the hospitality gift is less than \$10; and

(b) the aggregate value of all hospitality gifts from the person to the recipient in a calendar year is less than \$50.

(4) A person who engages in the conduct made unlawful under Subsection (1) or (2) is guilty of:

(a) a second degree felony, if the total value of the gratuity or kickback is \$1,000 or more;

(b) a third degree felony, if the total value of the gratuity or kickback is \$250 or more but less than \$1,000;

(c) a class A misdemeanor, if the total value of the gratuity or kickback is \$100 or more but less than \$250; and

(d) a class B misdemeanor, if the total value of the gratuity or kickback is less than \$100.

(5) The criminal sanctions described in Subsection (4) do not preclude the imposition of other penalties for conduct made unlawful under this part, in accordance with other applicable law, including:

(a) dismissal from employment or other disciplinary action;

(b) for an elected officer listed in Section 77-6-1, removal from office as provided in Title 77, Chapter 6, Removal by Judicial Proceedings;

(c) requiring the public officer or employee to return the value of the unlawful gratuity or kickback; and

(d) any other civil penalty provided by law.

**3979 63G-6a-2407. Duty to report unlawful conduct.**

(1) A procurement professional shall notify the attorney general or other appropriate prosecuting attorney if the procurement professional has actual knowledge that a person has engaged in:

(a) conduct made unlawful under this part; or

(b) 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.

(2) A procurement professional who fails to comply with the requirement of Subsection (1) is subject to any applicable disciplinary action or civil penalty identified in Subsection 63G-6a-2404(5).

*63G-8A-  
Section 802 of Procurement Code - Sole Source  
subsection 1, 2 + 3*

*Establish sole source committee*

*New CM/EC language and costs info*

