

Effective 5/13/2014

Superseded 3/17/2016

63C-9-403 Contracting power of executive director -- Health insurance coverage.

(1) For purposes of this section:

(a) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first of the calendar month following 60 days from the date of hire.

(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

(c) "Qualified health insurance coverage" is as defined in Section 26-40-115.

(d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

(2)

(a) Except as provided in Subsection (3), this section applies to a design or construction contract entered into by the board or on behalf of the board on or after July 1, 2009, and to a prime contractor or a subcontractor in accordance with Subsection (2)(b).

(b)

(i) A prime contractor is subject to this section if the prime contract is in the amount of \$1,500,000 or greater.

(ii) A subcontractor is subject to this section if a subcontract is in the amount of \$750,000 or greater.

(3) This section does not apply if:

(a) the application of this section jeopardizes the receipt of federal funds;

(b) the contract is a sole source contract; or

(c) the contract is an emergency procurement.

(4)

(a) This section does not apply to a change order as defined in Section 63G-6a-103, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection (2).

(b) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection (2) is guilty of an infraction.

(5)

(a) A contractor subject to Subsection (2) shall demonstrate to the executive director that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents during the duration of the contract.

(b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor shall demonstrate to the executive director that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the contract.

(c)

(i)

(A) A contractor who fails to meet the requirements of Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the division under Subsection (6).

(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (5)(b).

(ii)

- (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).
 - (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).
- (6) The department shall adopt administrative rules:
- (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
 - (b) in coordination with:
 - (i) the Department of Environmental Quality in accordance with Section 19-1-206;
 - (ii) the Department of Natural Resources in accordance with Section 79-2-404;
 - (iii) the State Building Board in accordance with Section 63A-5-205;
 - (iv) a public transit district in accordance with Section 17B-2a-818.5;
 - (v) the Department of Transportation in accordance with Section 72-6-107.5; and
 - (vi) the Legislature's Administrative Rules Review Committee; and
 - (c) which establish:
 - (i) the requirements and procedures a contractor must follow to demonstrate to the executive director compliance with this section which shall include:
 - (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or (b) more than twice in any 12-month period; and
 - (B) that the actuarially equivalent determination required for the qualified health insurance coverage in Subsection (1) is met by the contractor if the contractor provides the department or division with a written statement of actuarial equivalency from either:
 - (I) the Utah Insurance Department;
 - (II) an actuary selected by the contractor or the contractor's insurer; or
 - (III) an underwriter who is responsible for developing the employer group's premium rates;
 - (ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:
 - (A) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;
 - (B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;
 - (C) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-904 upon the third or subsequent violation; and
 - (D) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for employees and dependents of employees of the contractor or subcontractor who were not offered qualified health insurance coverage during the duration of the contract; and
 - (iii) a website on which the department shall post the benchmark for the qualified health insurance coverage identified in Subsection (1)(c).
- (7)
- (a)
 - (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or subcontractor who intentionally violates the provisions of this section shall be liable to the employee for health care costs that would have been covered by qualified health insurance coverage.
 - (ii) An employer has an affirmative defense to a cause of action under Subsection (7)(a)(i) if:
 - (A) the employer relied in good faith on a written statement of actuarial equivalency provided by:
 - (I) an actuary; or

- (II) an underwriter who is responsible for developing the employer group's premium rates; or
- (B) the department determines that compliance with this section is not required under the provisions of Subsection (3) or (4).
- (b) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (7).
- (8) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created in Section 26-18-402.
- (9) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this section:
 - (a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section 63G-6a-1603 or any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and
 - (b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.