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UTAH DEPARTMENT OF GOVERNMENT OPERATIONS

Government Operations Interim Committee - Study Items

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Purchasing from Community Rehabilitation Programs

63G-6a-805
“Set-Aside Contracts”



63G-6a-805: Purchase from Community Rehabilitation Program

- ▷ To facilitate the procurement of goods and services from community rehabilitation programs (“CRP”) by executive branch agencies
- ▷ Community rehabilitation programs
 - Primary purpose: employment and training of persons with a disability
 - Run by: government agency or qualified nonprofit organization



Issues to Address

- ▷ Including the definition of “Central not-for-profit association”* limits the resources that may be available to support the Purchasing from Persons with Disabilities Advisory Board (“PPDAB”).
 - PPDAB consists of:
 - Director or designee of the Division of Purchasing and General Services
 - Director or designee of the Utah State Office of Rehabilitation
 - Representative of the private business community
 - Appointed by the governor with advice/consent of the Senate
 - *(63G-6a-805(a)(b))



Issues to Address:

- ▶ Central not-for-profit association is the only call-out for administrative support
- ▶ Conflicts of interest
 - CRP programs' leadership are members of central not-for-profit association
- ▶ Unable to determine value of a central not-for-profit association for administrative support



Recommended Changes to 63G-6a-805

- ▷ Remove the definition of “Central not-for-profit association”
 - (1)(b) “Central not-for-profit association” means a group of experts designated by the advisory board to do the following, under guidelines established by the advisory board:
 - (i) assist the advisory board with its functions; and
 - (ii) facilitate the implementation of advisory board policies.

- ▷ Revise references to “central not-for-profit association” to allow PPDAB to contract with a qualified vendor to support the administrative duties of the PPDAB
 - 63G-6a-805(6)(a),(b), and (c)



Additions to Utah Procurement Code (63G-6a)

- Provisions Not to be Included in Contracts
 - Procurement Code Modifications



Provisions Not to be Included in Contracts

▷ Background:

- Utah Procurement Code “encourages establishment of standard contract clauses to assist the procurement unit and help contractors and potential contractors understand applicable requirements.”*
 - Utah will not consent to terms and conditions that places the state at increased risk.
- The commercial approach to contract negotiations has changed
 - Increase in relationships between manufacturers and authorized dealers/resellers
- The only current provision similar to this is only applicable to construction contracts.**



*63G-6a-1202

**63G-6a-1203

Example:

- ▷ Small Packages Delivery -
 - State of Utah leads a national cooperative for small package delivery services
 - Awarded to two major vendors
 - One vendor went through extensive terms and conditions negotiations and eventually executed agreement
 - Second vendor stated would only negotiate on terms that were statutory requirements
 - Most states were unable to sign a participating addendum
 - Utah does not have a participating addendum with this vendor



Issues to Address:

- ▷ Full exception from any indemnification
 - Increases the state's risk
 - May be in position to assume defense and costs with a dispute between contractor and third party
 - Contrary to Utah Constitution Article VI Section 29
- ▷ Provides notice to vendors of the terms to which the state cannot agree
- ▷ Streamlines and expedites the state's contract negotiations process
 - Protects the state from inadvertent terms that are contrary to law voiding those terms
- ▷ Addresses circumstances where negotiations by the state or the vendor is not feasible
 - Examples: small dollar agreements, sole source providers



Recommended Revision to 63G-6a-1203:

- ▷ Section title change from
 - “Certain indemnification provisions forbidden – Exceptions.”
 - to **“Provisions not to be included in contracts.”**



Recommended Revision to 63G-6a-1203:

▷ **Addition of the following:**

(4) A contract entered into pursuant to this chapter shall not contain a term that:

(a) Requires the state or any agency, authority, board, bureau, commission, department, institution, or any other entity thereof to:

(i) Defend, indemnify, or hold harmless another person; or

(ii) Be bound by terms and conditions that are unknown at the time of signing such contract or which may be unilaterally changed by the other party;

(b) Provides for:

(i) A person other than the Attorney General to serve as legal counsel for the state or for any agency, authority, board, bureau, commission, department, institution, or any other entity thereof;

(ii) The contract to be construed in accordance with the laws of a state other than the State of Utah;

(iii) Binding arbitration; or

(c) Is inconsistent with the provisions of Title 63G Chapter 2 Government Records Access and Management Act, relating to open records.

(d) If a contract entered into pursuant to this part contains a term prohibited under subsection (4) of this section, such term shall be void, and the contract shall be otherwise enforceable as if it did not contain such term.



Definition of “Award”

- ▷ Background:
 - While used throughout the Utah Procurement Code (63G-6a) the term “award” is not defined.



Issues to Address:

- ▷ A vendor “awarded” a contract following an evaluation of a procurement moves forward with an assumption that a contract is in place.
- ▷ Invoices payments being out of compliance due to work being done and billed for before an executed contract is in place



Recommended Changes to 63G-6a-103 Definitions

- ▷ Add new definition:

(4) “Award” means the identification and selection of a vendor that may, upon satisfying the procurement unit’s contracting requirements, contract with the procurement unit as a result of a standard procurement process or under Section 63G-6a Part 8.

- (a) Unless otherwise explicitly written in th solicitation - or exception award documentation - an award / notice of award - does not create or constitute a binding contract until the resulting contract has been fully executed by all parties and approving authorities; or

- (b) PO documentation signed and delivered to awarded vendor





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Thank You

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