

Effective 5/13/2014

Part 24
Unlawful Conduct and Penalties

63G-6a-2401 Title.

This part is known as "Unlawful Conduct and Penalties."

Enacted by Chapter 196, 2014 General Session

63G-6a-2402 Definitions.

As used in this part:

- (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; and
 - (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.
- (3) "Family member" means a father, mother, husband, wife, son, daughter, sister, brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.
- (4) "Governing body" means an administrative, advisory, executive, or legislative body of a 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;
 - (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).
- (8) "Procurement" has the same meaning as defined in Section 63G-6a-103, but also includes the awarding of a grant.
- (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.
- (10) "Public agency" has the same meaning as defined in Section 11-13-103, but also includes all officials, employees, and official representatives of a public agency, as defined in Section 11-13-103.

Amended by Chapter 181, 2017 General Session

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);
 - (b) any individual other than a procurement professional or contract administration professional; or
 - (c) a taxed interlocal entity, as defined in Section 11-13-602, or a director, officer, or employee of a taxed interlocal entity.
- (5) The other subsections of this section do not affect the applicability or effect of any other ethics, bribery, or other law.

Amended by Chapter 348, 2017 General Session

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;
 - (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.

Enacted by Chapter 196, 2014 General Session

63G-6a-2404.3 Dividing a procurement to avoid using a standard procurement process.

- (1) It is unlawful for a person knowingly to divide a single procurement into multiple smaller procurements if dividing the single procurement:
 - (a) is done with the intent to avoid the use of a standard procurement process that would have otherwise been required if the procurement had not been divided;
 - (b) constitutes unlawful conduct under Subsection 63G-6a-506(8); or
 - (c) is otherwise prohibited by this chapter.
- (2) A violation of Subsection (1) is:
 - (a) a second degree felony, if the value of the procurement before being divided is \$1,000,000 or more;
 - (b) a third degree felony, if the value of the procurement before being divided is \$250,000 or more but less than \$1,000,000;
 - (c) a class A misdemeanor, if the value of the procurement before being divided is \$100,000 or more but less than \$250,000; or
 - (d) a class B misdemeanor, if the value of the procurement before being divided is less than \$100,000.

Enacted by Chapter 348, 2017 General Session

63G-6a-2404.7 Improper action against a public officer or employee involved in the procurement process.

- (1)
 - (a) It is unlawful for a person knowingly to threaten to make a false allegation against a public officer or employee, or knowingly to threaten to take a menacing or intimidating action against a public officer or employee, with the intent to:
 - (i) prevent the officer or employee from performing a duty or responsibility that the officer or employee has under this chapter;
 - (ii) influence the officer or employee to award a contract under this chapter to the person or take other action under this chapter in favor of the person; or
 - (iii) retaliate against the officer or employee for:
 - (A) not awarding a contract under this chapter to the person;
 - (B) issuing a decision or taking an action under this chapter that is adverse to the person; or
 - (C) performing a duty or responsibility the officer or employee has under this chapter.
 - (b) A violation of Subsection (1)(a) is a class A misdemeanor.
- (2)
 - (a) It is unlawful for a person knowingly to make a false allegation against a public officer or employee, or knowingly to take a menacing or intimidating action against a public officer or employee, with the intent to:
 - (i) prevent the officer or employee from performing a duty or responsibility that the officer or employee has under this chapter;
 - (ii) influence the officer or employee to award a contract under this chapter to the person or take other action under this chapter in favor of the person; or

- (iii) retaliate against the officer or employee for:
 - (A) not awarding a contract under this chapter to the person;
 - (B) issuing a decision or taking an action under this chapter that is adverse to the person; or
 - (C) performing a duty or responsibility the officer or employee has under this chapter.
- (b) A violation of Subsection (2)(a) is a third degree felony.

Enacted by Chapter 348, 2017 General Session

63G-6a-2405 Discretion to declare contract or grant void -- Limitations.

- (1) Subject to Subsection (2), the governing body or chief executive officer of a public entity that awards a contract or grant to a person who engages in conduct made unlawful under this part may, in the sole discretion of the governing body or chief executive officer, declare the contract or grant to be void and unenforceable, unless:
 - (a) the contract or grant relates to the issuance of a bond or other obligation and the bond has been issued or obligation incurred; or
 - (b) a third party has substantially changed its position in reliance upon the contract or grant.
- (2) Declaring a contract or grant void under Subsection (1) does not affect the obligation of a procurement unit to pay for a contractor's proper performance completed under the contract or grant or the value the contractor provides to the public entity under the contract or grant before the contract or grant is declared void.
- (3) Subsection (1) applies only to a procurement with respect to which:
 - (a) public notice is provided on or after July 1, 2014, if public notice of the procurement is required; or
 - (b) the initial contact between the public entity and the potential contractor, for purposes of the procurement, occurs on or after July 1, 2014, if public notice of the procurement is not required.

Enacted by Chapter 196, 2014 General Session

63G-6a-2406 Authority of conducting procurement unit with respect to evaluation committee.

Nothing in this part restricts a conducting procurement unit from:

- (1) requiring an evaluation committee member to disclose a conflict of interest; or
- (2) removing an evaluation committee member for having a conflict of interest.

Enacted by Chapter 196, 2014 General Session

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

- (1) As used in this section, "unlawful conduct" means:
 - (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) A procurement professional with actual knowledge that a person has engaged in unlawful conduct shall report the person's unlawful conduct to:
 - (i) the state auditor; or
 - (ii) the attorney general or other appropriate prosecuting attorney.

- (b) An individual not subject to the requirement of Subsection (2)(a) who has actual knowledge that a person has engaged in unlawful conduct may report the person's unlawful conduct to:
 - (i) the state auditor; or
 - (ii) the attorney general or other appropriate prosecuting attorney.
- (3) A procurement professional who fails to comply with the requirement of Subsection (2)(a) is subject to any applicable disciplinary action.

Amended by Chapter 348, 2017 General Session