

## **Part 4 Miscellaneous**

### **79-2-401 Volunteer workers authorized.**

- (1) The department and its divisions may use volunteer workers to supplement the salaried work force.
- (2) A volunteer may be reimbursed for expenses actually and necessarily incurred, including transportation, meals, lodging, uniforms, and other items as approved by the Division of Finance, in the amounts and in accordance with the rules of the Division of Finance.
- (3) A volunteer is considered an employee of the state for the purposes stated in Section 67-20-3.
- (4) A volunteer may not donate a service to the department or a division unless the work program in which the volunteer would serve has first been approved, in writing, by the executive director and the executive director of the Department of Human Resource Management.
- (5) Volunteer services shall comply with the rules adopted by the Department of Human Resource Management relating to the services that are not inconsistent with this section.

Renumbered and Amended by Chapter 344, 2009 General Session

### **79-2-402 Outdoor recreation facilities -- Participation in federal programs -- Comprehensive plan.**

- (1) The executive director may, by following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures Act, seek a federal grant or loan or participation in a federal program to plan and develop an outdoor recreation resource, including:
  - (a) acquiring land or water; or
  - (b) acquiring an interest in land or water.
- (2)
  - (a) The executive director, in cooperation with the state planning coordinator and the state agency or political subdivision responsible for planning, acquisition, and development of outdoor recreation resources, may prepare, maintain, and update a comprehensive plan for the outdoor recreation resources of the state.
  - (b) The executive director shall submit the plan and any plan amendment to the governor for the governor's review and approval.
- (3) By following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures Act, the executive director may:
  - (a) apply to a United States agency for participation in or the receipt of aid from a federal program regarding outdoor recreation;
  - (b) in cooperation with other state agencies, enter into a contract or agreement with the United States or a United States agency;
  - (c) keep financial and other records; and
  - (d) furnish necessary reports to the United States official or agency.
- (4) In connection with obtaining the benefits of an outdoor recreation program, the executive director shall coordinate the department's activities with and represent the interests of all state agencies and political subdivisions having an interest in the planning, development, and maintenance of the outdoor recreation resource or facility.
- (5) The department may act as the agent of the state or a political subdivision to receive and to disburse federal money in accordance with the comprehensive plan.

- (6) The executive director may not make a commitment or enter into an agreement as authorized by this section and neither shall the governor approve a commitment or agreement unless sufficient funds are available to the department for meeting the state's share, if any, of project costs.
- (7) To the extent necessary to assure the proper operation and maintenance of areas and facilities acquired or developed pursuant to a program participated in by the state under this section, the areas and facilities shall be publicly maintained for outdoor recreation purposes.
- (8) The executive director may enter into and administer an agreement with the United States or a United States agency with the governor's approval for planning, acquisition, and development projects involving participating federal-aid funds on behalf of a political subdivision, if the political subdivision gives necessary assurance to the executive director that:
  - (a) the political subdivision has available sufficient funds to meet the political subdivision's share, if any, of the cost of the project; and
  - (b) the political subdivision will operate and maintain an acquired or developed area at the expense of the political subdivision for public outdoor recreation use.

Amended by Chapter 218, 2010 General Session

**79-2-403 Rulemaking for sale of real property -- Licensed or certified appraisers -- Exceptions.**

- (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if the department buys, sells, or exchanges real property, the department shall make rules to ensure that the value of the real property is congruent with the proposed price and other terms of the purchase, sale, or exchange.
- (2) The rules:
  - (a) shall establish procedures for determining the value of the real property;
  - (b) may provide that an appraisal, as defined under Section 61-2g-102, demonstrates the real property's value; and
  - (c) may require that the appraisal be completed by a state-certified general appraiser, as defined under Section 61-2g-102.
- (3) Subsection (1) does not apply to the purchase, sale, or exchange of real property, or to an interest in real property:
  - (a) that is under a contract or other written agreement before May 5, 2008; or
  - (b) with a value of less than \$100,000, as estimated by the state agency.

Amended by Chapter 289, 2011 General Session

**79-2-404 Contracting powers of department -- 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 day of the calendar month following 60 days from the date of hire.
  - (b) "Health benefit plan" means the same as that term is defined in Section 31A-1-301.
  - (c) "Qualified health insurance coverage" means the same as that term is defined in Section 26-40-115.
  - (d) "Subcontractor" means the same as that term is defined in Section 63A-5-208.

- (2)
  - (a) Except as provided in Subsection (3), this section applies a design or construction contract entered into by, or delegated to, the department or a division, board, or council of the department on or after July 1, 2009, and to a prime contractor or to 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 \$2,000,000 or greater at the original execution of the contract.
    - (ii) A subcontractor is subject to this section if a subcontract is in the amount of \$1,000,000 or greater at the original execution of the contract.
- (3) This section does not apply to contracts entered into by the department or a division, board, or council of the department if:
  - (a) the application of this section jeopardizes the receipt of federal funds;
  - (b) the contract or agreement is between:
    - (i) the department or a division, board, or council of the department; and
    - (ii)
      - (A) another agency of the state;
      - (B) the federal government;
      - (C) another state;
      - (D) an interstate agency;
      - (E) a political subdivision of this state; or
      - (F) a political subdivision of another state; or
  - (c) the contract or agreement is:
    - (i) for the purpose of disbursing grants or loans authorized by statute;
    - (ii) a sole source contract; or
    - (iii) 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)(b)(i) shall demonstrate to the department 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:
    - (i) place a requirement in the subcontract that the subcontractor shall obtain and maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependants during the duration of the subcontract; and
    - (ii) certify to the department 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 prime 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 department 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) a public transit district in accordance with Section 17B-2a-818.5;
    - (iii) the State Building Board in accordance with Section 63A-5-205;
    - (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;
    - (v) the Department of Transportation in accordance with Section 72-6-107.5; and
    - (vi) the Legislature's Administrative Rules Review Committee; and
  - (c) that establish:
    - (i) the requirements and procedures a contractor must follow to demonstrate compliance with this section to the department that shall include:
      - (A) that a contractor shall demonstrate compliance with Subsection (5)(a) or (b) at the time of the execution of each initial contract described in Subsection (2)(b);
      - (B) that the contractor's compliance is subject to an audit by the department or the Office of the Legislative Auditor General; and
      - (C) that the actuarially equivalent determination required for 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, which is no more than one year old, regarding the contractor's offer of qualified health coverage from an actuary selected by the contractor or the contractor's insurer, or 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 an employee and a dependent of an employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract; and
    - (iii) a website on which the department shall post the commercially equivalent benchmark, for the qualified health insurance coverage identified in Subsection (1)(c), provided by the Department of Health, in accordance with Subsection 26-40-115(2).
- (7)
  - (a)

- (i) In addition to the penalties imposed under Subsection (6), 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-1602 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.

Amended by Chapter 20, 2016 General Session  
Amended by Chapter 355, 2016 General Session