April 26, 2013

Re: Changes in the Utah Procurement Code

Dear Valued Supplier,

As a supplier to the University of Utah, we wanted to let you know about some important changes that occurred during this year’s legislative session with regard to the procurement process for public entities, including the University. The new legislation makes it unlawful and imposes criminal penalties on suppliers if they give items of value to a public employee who is involved in the procurement process or contract administration. The criminal penalties also exist for the public employee who requests or accepts such gifts. Please note that this new prohibition on gifts is broad and applies to meals, event tickets, etc.

The new Procurement Code is in effect May 1, 2013. The Senate Bill including the language of the code changes can be found at http://le.utah.gov/~2013/bills/sbillenr/SB0190.htm. The relevant sections of the code are included as an attachment to this letter for your convenience.

Because of the significant consequences that can result from violating this new statute, we wanted to make sure you were aware of the new law.

There is an exception for charitable donations to the University as long as there is no intent to influence the public procurement process. Additional information on donating is available from the University of Utah Office of Development at: www.giving.utah.edu

We appreciate the relationship that the University has with your firm and look forward to future opportunities to do business.

Best Regards,

[Signature]

James T. Parker, CPSM, C.P.M.
Director of Procurement and Supply Management
University of Utah
Utah Procurement Code

Part 23 Unlawful Conduct and Penalties

63G-6a-2302 Duty to report factual information to attorney general.

If a procurement unit has reason to believe that a person has engaged in a violation of Section 63G-6a-2304.5, collusion, or other anticompetitive practices relating to a procurement or a potential procurement, the procurement unit shall transmit a notice of the relevant facts to the attorney general.

63G-6a-2304.5 Gratuities -- Kickbacks -- Unlawful use of position or influence.

(1) As used in this section:

(a) "Contract administrator" means a person who administers a current contract, on behalf of a public entity, including:

(i) making payments relating to the contract;
(ii) ensuring compliance with the contract;
(iii) auditing a contractor in relation to the contract; or
(iv) enforcing the contract.

(b) "Contribution" means:

(i) a voluntary gift or donation to a public entity for the public entity's use, and not for a particular person employed by a public entity, including:
(A) a philanthropic donation;
(B) services;
(C) money; or
(D) other items of value;

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

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

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

(c) "Gratuity" means anything of value, including:

(i) money;

(ii) a loan at an interest rate below the market rate or with terms that are more advantageous to the person receiving the loan than terms offered generally on the market;

(iii) an award;

(iv) employment;

(v) admission to an event;

(vi) a meal;

(vii) lodging;

(viii) travel; or

(ix) entertainment for which a charge is normally made.
(d) "Family member" means a parent, stepparent, spouse, sibling, stepsibling, child, stepchild, grandparent, great-grandparent, grandchild, or great-grandchild.

(e) (i) "Hospitality gift" means a promotional or hospitality item, including, a pen, pencil, stationery, toy, pin, trinket, snack, nonalcoholic beverage, or appetizer.
    (ii) "Hospitality gift" does not include money, a meal, a ticket, admittance to an event, entertainment for which a charge is normally made, travel, or lodging.

(f) "Interested person" means a person who is interested in any way in the sale of a procurement item or insurance to a public entity.

(g) "Kickback" means a gratuity given in exchange for favorable treatment in a pending procurement or the administration of a contract.

(h) "Pending procurement" means a procurement at any stage, including:
    (i) preparing to engage in a standard procurement process, including preparing documents that will be used in the standard procurement process;
    (ii) engaging in a standard procurement process;
    (iii) evaluating, or making a recommendation regarding, a quote, a bid, or a response; and
    (iv) awarding a contract or otherwise making a decision to obtain a procurement item from a particular person.

(i) "Procurement participant" means a person involved in:
    (i) administering, conducting, or making decisions regarding a standard procurement process;
    (ii) making a recommendation regarding award of a contract or regarding a decision to obtain a procurement item for a particular person;
    (iii) evaluating a quote, a bid, or a response; or
    (iv) awarding a contract or otherwise making a decision to obtain a procurement item from a particular person.

(2) Nothing in this section exempts a person subject to the provisions of Title 67, Chapter 16, Utah Public Officers' and Employees Ethics Act, from complying with the provisions of the Utah Public Officers' and Employees Ethics Act.

(3) (a) Except as provided in Subsection (6) or (7), it is unlawful for an interested person to give, offer, or promise to give a gratuity to:
    (i) a procurement participant; or
    (ii) an individual who the person knows is a family member of a procurement participant.

(b) Except as provided in Subsection (6) or (7), it is unlawful for a procurement participant to ask, receive, offer to receive, accept, or ask for a promise to receive a gratuity from an interested person.

(c) Except as provided in Subsection (6) or (7), it is unlawful for a contractor to give a gratuity to:
    (i) a contract administrator of the contractor's contract; or
    (ii) an individual who the contractor knows is a family member of a contract administrator of the contractor's contract.

(d) Except as provided in Subsection (6) or (7), it is unlawful for a person who is a contract administrator of a contract to ask, receive, offer to receive, accept, or ask for a promise to receive, for the contract administrator or a family member of the contract administrator, a gratuity from the contractor for that contract.
(4)  
(a) It is unlawful for a person to give, offer, or promise to give a kickback to a procurement participant or to another person for the benefit of a procurement participant.
(b) It is unlawful for a procurement participant to ask, receive, offer to receive, accept, or ask for a promise to receive a kickback for the procurement participant or for another person.
(c) It is unlawful for a person to give a kickback to a contract administrator, or to another person for the benefit of a contract administrator.
(d) It is unlawful for a contract administrator to ask, receive, offer to receive, accept, or ask for a promise to receive a kickback for the contract administrator or for another person.

(5) It is unlawful for a procurement participant to use the procurement participant’s position or influence to obtain a personal benefit for the procurement participant, or for a family member of the procurement participant, from an interested person.

(6) A person is not guilty of a violation of Subsection (3) for giving, offering, promising to give, receiving, or accepting a hospitality gift if, as it relates to a procurement participant or a contract administrator:
(a) the total value of all hospitality gifts given, offered, or promised to, or received or accepted by, the procurement participant or contract administrator in relation to a particular procurement or contract is less than $10; and
(b) the total value of all hospitality gifts given, offered, or promised to, or received or accepted by, the procurement participant or contract administrator from any one person, supplier, bidder, responder, or contractor in a calendar year is less than $50.

(7)  
(a) A person is not guilty of a violation of this section for giving, offering, or promising a contribution to a public entity, unless the contribution is given, offered, or promised with the intent to induce a person to make a procurement decision, or to take action in relation to the administration of a contract, in reciprocation for the contribution.
(b) A person is not guilty of a violation of this section for receiving or accepting a contribution on behalf of a public entity, unless the person accepts or receives the contribution in exchange for making a procurement decision, or for taking action in relation to the administration of a contract, in reciprocation for the contribution.
(c) A person is not guilty of a violation of this section if the person gives, offers, or makes a pledge, in the form of a contribution to an organization to which a procurement participant or contract administrator belongs, unless the contribution is given, offered, or pledged with the intent to induce a person to make a procurement decision, or to take action in relation to the administration of a contract, in reciprocation for the contribution.

(8) A person who violates this section is guilty of:
(a) a felony of the second degree if the total value of the gratuity or kickback is $1,000 or more;
(b) a felony of the third degree 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; or
(d) a class B misdemeanor if the total value of the gratuity or kickback is less than $100.