

Introduction to Changes in the Utah Procurement Code

- **Thank you for Attending!**


<http://fbs.admin.utah.edu/purchasing>

Introduction to Changes in the Utah Procurement Code

- Utah follows ABA's Model Procurement Code
 - Audit of Division of Alcohol Beverage Control
 - Change in Funding for State Procurement
 - Influence - Legislators/AG's Office/Auditors
 - 3 Year Approach to Changes – Now in Year 2
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Introduction to Changes in the Utah Procurement Code

- Extensive Rewrite –more detailed & lengthy
 - Many changes ongoing in current session
 - Effective Date – May 1, 2013
 - Status of University Policy
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Appeals Process following a protest

Utah Procurement Code 63G-6a-1702

Introduction to Changes in the Utah Procurement Code

- Presenters and Agenda
 - Jim Parker, Purchasing Director
 - Jane Scott, Pcard Manager
 - Glendon Mitchell, Assoc. Director Purchasing
 - Perry Hull, Accounts Payable Manager
 - Jeff Johnson, Assoc. Director Purchasing
 - Buyers available for questions during break and after session

Small Dollar Purchases

Utah Procurement Code 63G-6a-408: Small Purchases

University Policy 3-191: Small Purchases and Expedited
Procurement

Definitions

- **Small Dollar Purchase:** Procurement of supplies or services; total cost is less than \$5,000.
 - Competitive bidding is not required but is encouraged.
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Definitions

- **Procurement Price:** Total acquisition price; i.e., cost of goods/services plus shipping, installation, ancillary items, training, tips, etc.
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Definitions

- **Annual cumulative threshold:** This limit defines the total cumulative amount that may be purchased from a single vendor within a fiscal year without a contract, regardless of payment type.
 - The proposed limit for the University is being determined.
 - Purchasing is taking the lead on this issue. More information to follow.
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Definitions

- **Order Splitting:** It is unlawful for an employee to intentionally or knowingly divide a procurement into one or more smaller procurements with the intent to qualify as a small purchase.
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Criminal Penalties for Violation

- A person who violates the small purchase law is guilty of a:
 - Class B misdemeanor if the total value of the divided procurements is less than \$100,000.
 - Penalties increase to a second degree felony depending on transaction total value.
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What You Can Do

- Focus of Code for small dollar transactions is the procurement process. Payment method does not alter legal procurement requirements. The University uses multiple methods for small dollar purchases and payments:

- PCard
 - Blanket Order
 - Campus Order
 - Limited Purchase Order
 - Reimbursement
 - Payment Request
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What You Can Do:

- ***KNOW LIMITS – SUPPLIERS – COST ESTIMATE***

- Keep it on Campus
 - Make single or multiple payments to one vendor as long as you don't exceed PCard limit
 - Make single or multiple payments to one vendor below \$5,000
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Example

Transaction Date	Merchant Name	Transaction Amount
5/16/2012	NEWEGG INC.	\$708.59
5/16/2012	NEWEGG INC.	\$1,362.29
5/16/2012	NEWEGG INC.	\$111.90
5/16/2012	NEWEGG INC.	\$1,374.55
		TOTAL: \$3557.33

What You Can Do:

- **UTILIZE COMPETITIVELY AWARDED CONTRACTS**
 - State Contracts
 - University Contracts
 - A PO (Blanket or General) is also a contract
 - Blanket order or General PO can be set up to pay with PCard
 - Department buyer verifies items are on contract or can contact Purchasing
 - Include Contract or PO number with PCard documentation
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Transaction Date	Merchant Name	Transaction Amount
1/12/2012	PROFESSIONAL SALES	\$1,062.00
2/10/2012	PROFESSIONAL SALES	\$438.00
4/6/2012	PROFESSIONAL SALES	\$1,367.79
4/6/2012	PROFESSIONAL SALES	\$51.00
4/6/2012	PROFESSIONAL SALES	\$219.00
4/6/2012	PROFESSIONAL SALES	\$1,367.80
4/25/2012	PROFESSIONAL SALES	\$74.00
4/25/2012	PROFESSIONAL SALES	\$3,191.06
4/25/2012	PROFESSIONAL SALES	\$459.00
4/25/2012	PROFESSIONAL SALES	\$219.00
4/25/2012	PROFESSIONAL SALES	\$1,286.75
4/25/2012	PROFESSIONAL SALES	\$1,624.44
5/16/2012	PROFESSIONAL SALES	\$69.00
5/16/2012	PROFESSIONAL SALES	\$3,191.06
5/16/2012	PROFESSIONAL SALES	\$1,286.75
9/24/2012	PROFESSIONAL SALES	\$219.00
10/4/2012	PROFESSIONAL SALES	\$219.00
10/18/2012	PROFESSIONAL SALES	\$211.89
		Total: \$16,556.54

What You Can Do:

EXCEPTIONS

- Have written PRE-APPROVAL from the Purchasing Department for licensing, registrations, etc. that may exceed the small dollar limit
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Example

Transaction Date	Merchant Name	Number of Transactions	Transaction Amount	PCard Transaction Limit
10/15/2012	ACMIEEE SC2012	12	4,980.00	3,000.00
10/16/2012	ACOG AMERICAN	2	1,380.00	1,000.00
10/17/2012	AMERICAN ASSOCIATION	9	7,305.00	5,000.00
10/25/2012	JOURNAL OF PROFESSIONAL	2	5,985.00	5,000.00

Procedure Requirements

- Small Dollar Documentation—include contract information, procurement process followed, indicate clear business purpose if not readily apparent; retain records
 - State: purchasing records retention = 4 years
 - Pcard & Federal: purchasing records retention = 7 years
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Procedure Requirements

- Create requisition for purchases over \$5,000 and send to Purchasing
 - Contact buyer to discuss ongoing, continuous and regularly scheduled purchases
 - Review re-occurring small dollar purchases from the same vendor
 - Department contracts or blankets are an option to consider
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Order Splitting

Order splitting can include, but may not be limited to:

1. Purchases made by an employee from the same vendor on the same day or within a close timeframe for goods or services that exceed \$5,000;
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Example

Transaction Date	Merchant Name	Transaction Amount
02/14/2012	SALT LAKE PRINT LLC	\$2,174.38
02/14/2012	SALT LAKE PRINT LLC	\$1,695.56
02/14/2012	SALT LAKE PRINT LLC	\$686.64
02/14/2012	SALT LAKE MAILING AND	\$2,823.73
02/14/2012	SALT LAKE MAILING AND	\$1,356.86
02/14/2012	SALT LAKE MAILING AND	\$961.71
	TOTAL:	\$9,698.88

Order Splitting

2. Dividing payments that exceed small dollar limit by:

- Using multiple payment methods (Pcard, Limited Purchase Order (LPO), Payment Request, Reimbursement)
 - Splitting purchase/payment among multiple Pcard holders
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Order Splitting

3. Repetitive small dollar purchases during a fiscal year for goods or services to the same vendor or group of vendors that exceeds the annual cumulative threshold;

Order Splitting

4. Multiple charges on the same day to the same vendor to circumvent the PCard transaction limit;
 - a. Exceptions must be pre-approved in writing by PCard or Purchasing Management;
 - b. PCard transaction limits apply for all PCard purchases unless a waiver is granted before the purchase.
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Order Splitting

Vendors may suggest to split a transaction to avoid limits.

- a. An employee may not ask for this to be done.
 - b. The employee is responsible for the procurement.
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Audit Processes

- Regularly scheduled Pcard audits are ongoing
 - Internal Audit providing data quarterly for additional Pcard review
 - Audit processes for Limited Purchase Orders under review
 - University anticipates a state audit for small purchases
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Accounts Payable Topics

- University Regulations – structure
 - New Expenditure Policy coming soon...
 - Accounts Payable forms and processes affected;
 - Payment Request
 - Limited Purchase Order
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University Regulations

Consist of the following, in order of weight carried:

- **Policy**
 - **Rule**
 - **Procedure**
 - **Guideline**

Regulations found at www.regulations.utah.edu

University Regulations: Policy

- A general statement addressing governance, philosophies, principles or broad concepts inherent in carrying out the missions of the University.
 - Directly implement or are reflective of state or federal law or applicable policies, procedures.
 - Recommended by the President and approved by the Board of Trustees.
 - Every Policy is binding on all faculty, staff and students.
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University Regulations: Rule

- A general statement governing the operations of the University or may provide more specific interpretive direction where University Policies are either silent, vague or flexible.
 - May interpret, refine, clarify and complement one or more Policies.
 - Often address the application of Policy and are authoritative.
 - Promulgated by the President, a Vice President, or another officer to whom the President or a Vice President has delegated.
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University Regulations: Procedure

- Sets forth the steps necessary to appropriately and uniformly perform a task to carry out the external business or internal activities of the University.
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University Regulations: Guideline

- Provides practical information or other guidance that may be useful to persons in carrying out their individual responsibilities in accord with University Regulations.
 - Often issued as a reminder to the campus community of the relevancy and applicability of University Regulations and usually focuses on a specific aspect of such.
 - Guidelines are not authoritative, but are meant to reflect best practices in administering the operations of the University.
 - Typically presented in the form of memoranda addressed to persons for whom the guidance or practical information is most directly useful
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Policy 3-010

Expenditure of University Funds & Personal Reimbursements

- Binding for *all* University college, departments, and units, including University Hospitals & Clinics.
 - All University Funds are included, and are defined as those which are “administered or held by the University.” This may include;
 - Departmental operating funds
 - Clinical income
 - Gifts
 - Any other funds for which the University is accountable, including monies from federal contracts and grants
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Policy 3-010

Expenditure of University Funds & Personal Reimbursements

- Emphasis on *preferred procurement methods* and utilization of negotiated contracts, and the least costly expenditure outlay to the University.
 - *Discourages the use of individual's personal funds* as a procurement method.
 - *Discourages the payment of sales tax* by the University.
 - Prohibits use of personal funds to purchase on behalf of the University in combination with use of the University's Sales Tax Exemption certificate.
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Policy 3-010

Expenditure of University Funds & Personal Reimbursements

- Establishes a minimum amount, currently \$25, under which a *departmental petty cash fund* should be used.
 - Establishes a maximum amount, *currently \$1,000*, above which additional approval is required, in addition to an explanation why preferred procurement methods were not used.
 - If an individual makes a purchase which violates University procurement policies, and then seeks reimbursement, it is *possible that reimbursement will not be processed*.
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Policy 3-010

Expenditure of University Funds & Personal Reimbursements



UTAH STATE AND LOCAL GOVERNMENTS AND PUBLIC ELEMENTARY AND SECONDARY SCHOOLS

Sales Tax License No. 11874443-002-STC

I certify the tangible personal property or services purchased are to be paid directly with funds from the entity noted on this form and will be used in the exercise of that entity's essential functions. For construction materials, if the purchaser is a Utah state or local government, these construction materials will be installed or converted into real property by employees of this government entity.

"Directly" does not include per diem, entity advances, or government reimbursements for employee credit card purchases.

CAUTION: This exemption does not apply to government or educational entities of other states.

Rule 3-010A

Expenditure and Reimbursement Requirements

- Establishes the following minimum documentation requirements;
 - Description of item or services purchased
 - Date of invoice or date of purchase
 - Amount
 - Adequate description of business purpose
 - Appropriate invoice or receipts
 - Appropriate accounting distribution
 - Necessary approvals
-

Rule 3-010A

Expenditure and Reimbursement Requirements

- Combining the use of personal funds with the use of the University Sales Tax exemption certificate is a violation of state law.
 - If documentation suggests misuse of this certificate, the reimbursement will require a letter of justification, including approval of the cognizant Vice President.
 - Reimbursement requests will not be eligible for expedited processing (Next Day or Same Day) without department Director or Chair approval.
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Procurement & Payment Options

Payment Request

- Included within the scope of changes to Procurement code and University Policy.
 - Used for payments to individuals for services, reimbursements, Guest Lecturers, Performers, Honoraria.
 - Payments to Independent Contractors and Consultants, or other service providers still subject to [Policy 3-111](#).
 - For incremental services or deliverables with multiple payment installments, use Requisition instead of Payment Request.
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Procurement & Payment Options

Limited Purchase Order

- Included within the scope of changes to Procurement code and University Policy.
 - Issued to an **LPO Custodian**, upon completion of an agreement, who is primarily responsible for the control of these forms.
 - Used for a one-time order between the University and a vendor. The total order, including back-ordered items, cannot exceed \$5,000.
 - For incremental services or deliverables with multiple payment installments, use Requisition instead of Limited Purchase Order.
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Procurement & Payment Options

Limited Purchase Order – Changes

- Email list has been created allowing AP to easily communicate with LPO Custodians going forward.
 - The **LPO Agreement** will be modified in order to be consistent with updated Policy and Procurement Code.
 - The **LPO Custodian**, has been established as the individual primarily responsible for the compliance with University policy for the LPO's assigned to them.
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Procurement & Payment Options

Limited Purchase Order – Changes

- Planned development of online training module for **LPO Custodians**.
 - **Possible** additional control mechanisms, such as
 - Releasing LPO forms in smaller numbers
 - Requiring completion of an LPO log
 - Accounting for all issued LPO forms before new forms are issued.
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Gratuities - Kickbacks

- Procurement Code 63G-6a-2304
 - University Policy 1-006
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University Policy Prohibits

Solicitation or receipt of a gift by a University Employee, whether directly or indirectly through the institution when (a) the purpose or effect of the gift is likely to improperly influence the Employee in the discharge of his/her University responsibilities

Procurement Code

- It is unlawful for a procurement participant to ask, receive, offer to receive, accept, or ask for a promise to receive a gratuity or kickback from an interested person.
 - It is unlawful for a contractor to offer or give a gratuity or kickback.
 - Unlawful to give a gratuity to an individual who the person knows, or should have known, is an immediate family member of a procurement participant.
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Gratuities – Kickbacks: Definitions

Procurement participants are those who:

- Make a decision to obtain a procurement item from a particular person.
 - Prepares for, administers, or conducts a procurement process.
 - Evaluate a quote, bid, or response.
 - Make an award recommendation.
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Gratuities – Kickbacks: Definitions

Contract Administrator – Newly Defined Group

- Makes a payment
 - Ensures contract compliance
 - Audits a contractor in relation to the contract
 - Enforces a contract
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Gratuities – Kickbacks: Definitions

Gratuity is:

- Money
 - Loan
 - An award
 - Employment
 - Admission to an event
 - Meal
 - Lodging, travel
 - Entertainment for which a charge is normally made
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Gratuities – Kickbacks: Definitions

Interested Person

- A person who is interested in any way in the sale of a procurement item or insurance to a public entity.
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Gratuities – Kickbacks: Definitions

- Family Member
 - Parent, step-parent, spouse, sibling, step-sibling, child, step-child, ~~father in-law, mother in-law, brother in-law, sister in-law~~, grandparent, great grandparents, grandchild, or great grandchild, ~~aunt, uncle, nephew or first cousin~~.
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Gratuities – Kickbacks: Definitions

- Hospitality Gift
 - Acceptable: Promotional hospitality item includes, a pen, pencil, stationary, a toy, pin, trinket, snack, non-alcoholic beverage, or appetizer. **Less than \$10 if not involved with an ongoing procurement.**
 - Prohibited: meal, ticket, admittance to an event or entertainment, travel or lodging.
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Safety Net!

Not Guilty of a violation if:

- Accepting a hospitality gift: total value is less than \$10 unless involved with an ongoing procurement.
 - Total value of all hospitality gifts less than \$10 to a procurement participant is less than \$50 per calendar year from any one supplier .
 - Giving, offering, pledging or promising and receiving a philanthropic donation to the University is allowed (**unless the donation is to induce a procurement decision**)
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Gratuities – Kickback: Violation

Total value

- Less than \$100: Class B misdemeanor
 - \$100 - \$250: Class A misdemeanor
 - \$250 - \$1,000: 3rd degree felony
 - \$1000+: 2nd degree felony
-

Summary

- Don't accept anything of value from a supplier, unless it meets the definition and threshold of a hospitality item.
 - No meals, tickets or entertainment from a supplier .
 - Inform members of your department who participate in purchasing.
 - Inform suppliers who may offer gratuities, meals, tickets, etc.
 - **Separate duties of development officers and procurement participants.**
 - Contact Purchasing or Office of General Counsel with questions.
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Summary

- Departments can establish department policies more conservative than the state law.
 - Example: University Hospital and Office of General Counsel.
 - Samples from suppliers become University property.
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Business Meals

- Not specifically addressed in new Procurement Code.
 - Topic drawing a lot of attention from administrators due to changes in small dollar purchases.
 - Business meal practices are being reviewed.
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Business Meals

Reasonable:

- Main focus of the activity is business and consumption of food is incidental to the purpose of the meeting

Business Related:

- Ordinary and necessary to conduct University business
- Further the mission of the institution

Complies with Federal and State Law

- IRS tax requirements
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IRS Meal Requirements

- Amount
 - Date
 - Place
 - Business Purpose
 - Attendees
-

Business Meals

Concerns

- Need to provide and improve documentation to reduce risk by participants and authorizers
 - Frequency of business meals; Seek to improve efficiency of payment methods and address appropriate conditions for business meals
 - Avoid lavish meals
-

Business Meals

What to Expect

- University committee is working on an updated rule to offer more guidance and clarification regarding business meals
- Pcard, Limited Purchase Order and Reimbursement processes and forms are being reviewed in regard to business meals
- Audit processes in regards to business meals are being reviewed.

STAY TUNED – MORE INFORMATION TO FOLLOW!

Business Meal Questions

Contact Perry Hull
Accounts Payable

perry.hull@admin.utah.edu

801-581-6338

Procurement Code Changes – Bid Processes

- Criteria in addition to cost can be considered
 - Weighting not allowed – (Yes/No)
 - Criteria must be included in the bid
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Procurement Code Changes – Bid Processes

- Examples of Criteria Used in Bids
 - Experience
 - Financial Stability
 - Testing
 - Quality
 - References
 - Workmanship and others
 - Cannot be unduly restrictive
-

Procurement Code Changes – Bid Processes

- Anticipate less use of RFPs
-

Procurement Code Changes – Bid Processes

- May use 2 step bid more
 - 1st - Prequalify Products/Suppliers
 - 2nd – Obtain bid for price
 - Contract term up to 5 years/Length must be specified
 - 5% negotiation if lowest bid exceeds budget
-

Procurement Code Changes – RFP Processes

- Many Changes to the RFP Process
 - Anticipate less use
 - Committee make-up spelled out
 - Posting RFP weighting and formulas required
 - Cost/Other Criteria Scored Separately
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Procurement Code Changes – RFP Processes

- Cost Analysis Required (over 5% or \$10,000)
 - Financial weighting to non-financial criteria
 - Limited exceptions
 - Assign Purchasing Rep for each RFP
 - Will need to provide future training for campus
-

Procurement Code Changes – Sole Source

- Post sole source for 7 days before award
 - Postings not required if less than \$50,000
 - Items never bid – may post list on annual basis
 - Will be more scrutiny of sole source requests
 - Limited exceptions allowed
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Purchases from Utah Correctional Industries

Utah Procurement Code 63G-6a-804:
Purchase of Prison Industry Goods

uci.utah.gov

Purchases from Utah Correctional Industries

- UCI offers wood furniture, seating, uniforms, embroidery, printing, signage, data & scanning services, construction
 - Bidding is not required when purchasing from UCI
 - UCI is a current and active supplier to University departments
 - <http://uci.utah.gov/>
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Contracts and Bids Prohibited from Suppliers with Tax Liens

Utah Procurement Code 63G-6a-905:
Quote, Bid, Offer or Contract Prohibited...with Outstanding
Tax Lien...

Contracts and Bids Prohibited from Suppliers with Tax Liens

- The University is to avoid financial transactions with suppliers having a tax lien in Utah
 - Applies to quotes, bids, offers and contracts
 - Exceptions will be reviewed and considered by the Purchasing Department
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Participating in Cooperative Purchasing / Contracting with the Federal Government

Utah Procurement Code 63G-6a-2105:
Participation...in...Cooperative Purchasing

Participating in Cooperative Purchasing / Contracting with the Federal Government

- The University's participation in cooperative purchasing is limited
 - Purchasing directly from the federal government is allowable, with certain limitations
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Contract Prepayments

Utah Procurement Code 63G-6a-1208:
Installment Payments – Contract Prepayments

Contract Prepayments

- Goods may not be paid for prior to receipt
 - Exception requests must be submitted in writing to the Purchasing Department
 - Small dollar purchases may be excluded by the new rules
 - Department assumes business risk when prepayments are allowed
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Future Training

- RFP Process
 - Bid Procedure
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Questions

<http://fbs.admin.utah.edu/purchasing>

<http://le.utah.gov/~2013/bills/sbillint/SB0190.pdf>
