

1 **PROCUREMENT AMENDMENTS - SMALL PURCHASES**

2 2013 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Ralph Okerlund**

5 House Sponsor: _____

6

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions of the Utah Procurement Code to exempt a public
10 procurement unit, under certain circumstances, from the prohibition against obtaining a
11 procurement item under the small purchase provisions of the Utah Procurement Code if
12 the procurement item is available through a state contract.

13 **Highlighted Provisions:**

14 This bill:

15 ▶ permits a public procurement unit that is required to obtain a procurement item
16 through a state contract to purchase the item, outside of the state contract, as a small
17 purchase if obtaining the procurement item under the state contract would incur
18 significant additional expense in time, travel, or shipping;

19 ▶ prohibits a public procurement unit from using the exception described in the
20 preceding paragraph if the public procurement unit anticipated, and could have
21 avoided, the significant additional expense; and

22 ▶ makes technical changes.

23 **Money Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 If approved by two-thirds of all the members elected to each house, this bill takes effect
27 on May 1, 2013.



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **63G-6a-408 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

31 **63G-6a-2202 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347

32 **63G-6a-2305 (Effective 05/01/13)**, as enacted by Laws of Utah 2012, Chapter 347



34 *Be it enacted by the Legislature of the state of Utah:*

35 Section 1. Section **63G-6a-408 (Effective 05/01/13)** is amended to read:

36 **63G-6a-408 (Effective 05/01/13). Small purchases.**

37 (1) The applicable rulemaking authority may make rules governing small purchases,
38 including:

39 (a) establishing the maximum expenditure that may qualify as a small purchase, unless
40 otherwise provided by statute;

41 (b) establishing expenditure thresholds and procurement requirements related to those
42 thresholds; and

43 (c) the use of electronic, telephone, or written quotes.

44 (2) ~~[(a)]~~ Except as provided in Subsection ~~[(2)(b)]~~ (3), a public procurement unit may
45 not obtain a procurement item through a small purchase procurement process if the
46 procurement item may be obtained through a state contract.

47 ~~[(b)]~~ (3) Subsection (2)~~[(a)]~~ does not apply:

48 ~~[(i)]~~ (a) to a non-executive state procurement unit;

49 ~~[(ii)]~~ (b) if the procurement officer or the head of the state purchasing unit authorizes
50 an exception to the requirement; ~~[(or)]~~

51 ~~[(iii)]~~ (c) to a local public procurement unit~~[-];~~ or

52 (d) (i) if the procurement item:

53 (A) costs less than \$100;

54 (B) cannot be obtained under a state contract without incurring expense in time, travel,
55 or shipping that exceeds 25% of the cost of the procurement item; and

56 (C) cannot be obtained under a state contract within 10 miles of the location where the
57 procurement item is needed; and

58 (ii) if the need for the procurement item was not anticipated when it could have been

59 obtained under a state contract:

60 (A) without incurring significant expense in time, travel, or shipping that exceeds 25%
61 of the cost of the procurement item; or

62 (B) within 10 miles of the location where the procurement item is needed.

63 ~~[(c)]~~ (4) An entity that is exempt from the requirements of Subsection (2)~~[(a)]~~ is
64 encouraged, but not required, to comply with Subsection (2)~~[(a)]~~.

65 ~~[(3)]~~ (5) (a) Except as provided in Subsection ~~[(3)]~~(5)(b), a public procurement unit:

66 (i) may not use the small purchase procurement process described in this section for
67 ongoing, continuous, and regularly scheduled procurements; and

68 (ii) shall make its ongoing, continuous, and regularly scheduled procurements through
69 a contract awarded through a procurement process described in this chapter or an applicable
70 exception to a procurement process.

71 (b) Subsection ~~[(3)]~~ (5)(a) does not apply to an ongoing, continuous, or regularly
72 scheduled procurement to the extent that the total expenditures for the procurement during a
73 fiscal year do not exceed the maximum expenditure that the public procurement unit is
74 permitted to make under this section, as established by rule made by the applicable rulemaking
75 authority.

76 ~~[(4)]~~ (6) It is unlawful for a person to intentionally or knowingly divide a procurement
77 into one or more smaller procurements with the intent to make a procurement:

78 (a) qualify as a small purchase, if, before dividing the procurement, it would not have
79 qualified as a small purchase; or

80 (b) meet a threshold established by rule made by the applicable rulemaking authority,
81 if, before dividing the procurement, it would not have met the threshold.

82 ~~[(5)]~~ (7) A division of a procurement that is prohibited under Subsection ~~[(4)]~~ (6)
83 includes doing any of the following with the intent or knowledge described in Subsection ~~[(4)]~~
84 (6):

85 (a) making two or more separate purchases;

86 (b) dividing an invoice or purchase order into two or more invoices or purchase orders;

87 or

88 (c) making smaller purchases over a period of time.

89 ~~[(6)]~~ (8) A person who violates Subsection ~~[(4)]~~ (6) is subject to the criminal penalties

90 described in Section 63G-6a-2305.

91 [~~(7)~~] (9) The Division of Finance within the Department of Administrative Services
92 may conduct an audit of a public procurement unit in the state executive branch to verify
93 compliance with the requirements of this section.

94 [~~(8)~~] (10) A public procurement unit in the state executive branch may not make a
95 small purchase after January 1, 2013, unless the chief procurement officer certifies that the
96 person responsible for procurements in the public procurement unit has satisfactorily
97 completed training on this section and the rules made under this section.

98 Section 2. Section **63G-6a-2202 (Effective 05/01/13)** is amended to read:

99 **63G-6a-2202 (Effective 05/01/13). Ethical requirements for public procurement.**

100 (1) As used in this section, "ethics provisions of the model procurement code" means
101 the following provisions of Article 12 of the 2000 American Bar Association Model
102 Procurement Code for State and Local Governments:

- 103 (a) Section 12-202, General Standards of Ethical Conduct;
- 104 (b) Section 12-204, Employee Conflict of Interest;
- 105 (c) Section 12-205, Employee Disclosure Requirements;
- 106 (d) Section 12-206, Gratuities and Kickbacks;
- 107 (e) Section 12-207, Prohibition Against Contingent Fees;
- 108 (f) Section 12-208, Restrictions on Employment of Present and Former Employees;

109 and

- 110 (g) Section 12-209, Use of Confidential Information.

111 (2) The applicable rulemaking authority shall make rules that prescribe ethical
112 standards for its agents and employees in relation to a procurement.

113 (3) The ethical standards described in Subsection (2) shall be based upon the general
114 principles of the ethics provisions of the model procurement code.

115 (4) The applicable rulemaking authority:

116 (a) is not required to adopt or implement any of the specific provisions of the ethics
117 provisions of the model procurement code; and

118 (b) may not adopt any provision of the ethics provisions of the model procurement
119 code that conflict with this chapter.

120 (5) A public procurement unit shall advise its employees and agents who are involved

121 in a procurement process for the public procurement unit regarding the following provisions
122 and the penalties associated with those provisions:

- 123 (a) the provisions of this part and rules made under this part;
- 124 (b) Subsections 63G-6a-408[~~(4)~~] (6) and [~~(5)~~] (7), relating to artificially dividing a
125 procurement;
- 126 (c) Section 63G-6a-2303, Offering a gratuity;
- 127 (d) Section 63G-6a-2304, Accepting or requesting a gratuity;
- 128 (e) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;
- 129 (f) Section 76-8-103, Bribery or offering a bribe;
- 130 (g) Section 76-8-105, Receiving or soliciting bribe or bribery by public servant; and
- 131 (h) Section 76-8-402, Misusing public money.

132 Section 3. Section **63G-6a-2305 (Effective 05/01/13)** is amended to read:
133 **63G-6a-2305 (Effective 05/01/13). Penalties for artificially dividing a purchase.**

134 A person who violates Subsection 63G-6a-408[~~(4)~~] (6) or [~~(5)~~] (7) is guilty of:

- 135 (1) a felony of the second degree if the total value of the divided procurements is
136 \$1,000,000 or more;
- 137 (2) a felony of the third degree if the total value of the divided procurements is
138 \$250,000 or more, but less than \$1,000,000;
- 139 (3) a class A misdemeanor if the total value of the divided procurements is \$100,000 or
140 more, but less than \$250,000; or
- 141 (4) a class B misdemeanor if the total value of the divided procurements is less than
142 \$100,000.

143 Section 4. **Effective date.**

144 If approved by two-thirds of all the members elected to each house, this bill takes effect
145 on May 1, 2013.