Part 24. Unlawful Conduct and Penalties

63G-6a-2401 This part is known as "Unlawful Conduct and Penalties."

(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;
   (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.
(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;

3802 (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).

(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.

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); or

(b) any individual other than a procurement professional or contract administration professional.

(5) The other subsections of this section do not affect the applicability or effect of any other ethics, bribery, or other law.

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; or
   (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.

3979 63G-6a-2407. Duty to report unlawful conduct.
(1) A procurement professional shall notify the attorney general or other appropriate prosecuting attorney if the procurement professional has actual knowledge that a person has engaged in:
(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 procurement professional who fails to comply with the requirement of Subsection (1) is subject to any applicable disciplinary action or civil penalty identified in Subsection 63G-6a-2404(5).